Neutral Citation Number: [2021] EWCA Crim 1443

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
Case No 202101206-B3
(and 11 other linked cases)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/10/2021

Before:

LORD JUSTICE HOLROYDE
MR JUSTICE PICKEN
and
MRS JUSTICE FARBEY DBE

- -

Between:

ROBERT AMBROSE & OTHERS — **Appellants**

- and –

POST OFFICE LIMITED — **Respondent**

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Mr T Moloney QC and Miss K O'Raghallaigh instructed by **Hudgell Solicitors** for the **Appellants**: Robert Ambrose, John Armstrong, Timothy Brentnall, Gurdeep Singh Dhale, John Dickson, Jerry Hosi, Rizwan Manjra, Abiodun Omotoso, Carina Price (née Dowland), Sami Sabet, Hasmukh Shingadia and Malcolm Watkins

Mr S Baker QC and Miss J Carey instructed by **Peters & Peters Solicitors LLP** for the **Respondent**

Hearing date : 19 July 2021

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Approved Judgment

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Lord Justice Holroyde:

1. Each of these twelve appellants was formerly employed by Post Office Limited or its predecessors ("POL") as a sub-postmaster, a subpostmistress or, in Robert Ambrose's case, a manager. For convenience, we refer to them all in this judgment as "SPMs". On various dates between 2003 and 2012 each of them was prosecuted by POL and convicted of one or more offences of dishonesty. All but one of them were sentenced to terms of imprisonment, although in eight of the cases those sentences were suspended. Many years after their respective convictions, each of them applied for a long extension of time and for leave to appeal against their convictions. At a hearing on 19 July 2021 we granted all of their applications, allowed their appeals and quashed their convictions. We indicated that we would give our reasons in writing at a later stage. This we now do.

2. Earlier this year, in the cases of *Josephine Hamilton and others* [2021] EWCA Crim 577, we quashed the convictions of 39 former SPMs. In our judgment handed down on 23 April 2021 we set out the circumstances which had given rise to those 39 appeals, to three other unsuccessful appeals and to the present appeals. We considered the issues which had arisen as to the reliability of a computerised accounting system, "Horizon", which was in use in the relevant branch post offices during the relevant period. We referred to two of the judgments given by Mr Justice Fraser in civil proceedings brought in the High Court by claimants representing hundreds of SPMs. We explained why it was possible in law for the cases of those appellants to be referred to this court by the Criminal Cases Review Commission ("CCRC") despite the passage of many years since their convictions, and despite the fact that some of them had pleaded guilty. We reflected on the legal principles applicable to the two grounds of appeal which Ms Hamilton and the other appellants had advanced, 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").

3. 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.

4. It is not necessary to repeat, in this judgment, all that we said in our earlier judgment. It suffices to note, in relation to the first ground of appeal, that we were satisfied 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; 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; but 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 referred to the advice given to POL in 2013 by a barrister, Mr Simon Clarke, in relation to its duty of disclosure. We were

satisfied that POL had consistently failed to be open and honest about the issues affecting Horizon and, as we put it in paragraph 121 of our judgment, had effectively steamrolled over any SPM who sought to challenge its accuracy.

5. It is appropriate to repeat the conclusion which we reached, in paragraph 123 of our judgment, about what we found to have been pervasive failures of investigation and disclosure which went to the heart of the prosecution in each of the 39 cases in which the appeals were successful:

> "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."

6. We went on (in paragraph 127) to rule, as a matter of law, that the same acts and omissions may provide a basis for a finding of both of the categories of abuse of process. In paragraphs 128-137 we reflected on the matters relevant to our consideration of whether that was the position in the 39 "Horizon cases", including POL's knowledge of the severe consequences of conviction for the SPMs concerned and their families. We concluded, in relation to the second ground of appeal, that POL's failures of investigation and disclosure were so egregious as to make the prosecution of any of the "Horizon cases" an affront to the conscience of the court. Again, it is appropriate to quote what we said in that regard in paragraph 137 of our judgment:

> "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."

7. For those reasons, which were of course much more fully expressed in our judgment, we were satisfied that the convictions were unsafe and we allowed those 39 appeals on both grounds. The crucial distinction between those appeals, and the three appeals which were dismissed, was that we found the latter group were not "Horizon cases".

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8. Each of the present appeals raises the same two grounds of appeal. Each appellant contends that his or her case was a "Horizon case" which involved both categories of abuse of process, and that the convictions are accordingly unsafe.

9. As we have indicated, the earlier appeals came before the court as a result of referrals by the CCRC. The present appeals do not: it has therefore been necessary for the appellants to apply for the necessary extension of time and for leave to appeal. In considering the merits of the appeals, however, the principles which we have applied have been those which we set out in our earlier judgment.

10. We are again grateful to all counsel and solicitors, and their support staff, for the care which has been taken in preparing and presenting these appeals. The court has been greatly assisted by the sensible and realistic approach which all parties have taken when applying the principles set out in *Hamilton and others* to the facts and circumstances of the present cases. We would wish particularly to commend the diligence with which those acting for POL in these, and the earlier, appeals have conducted a most extensive disclosure exercise. POL has rightly acknowledged the serious failings in the original prosecutions and has fairly made important concessions. An important consequence of that approach was that the court was able to determine these twelve appeals, and to quash the convictions, at an earlier stage of the appeal proceedings than would otherwise have been possible. That saving of time was to the benefit of those who have lived for many years with the burden of having been wrongfully convicted.

11. POL has conceded that each of these twelve cases should be treated as a "Horizon case". It has further conceded that the failures of investigation and disclosure were such that this court may properly find that the prosecution of each case was an abuse of process within both category 1 and category 2. POL has also confirmed that no retrial would be sought of any successful appellant.

12. We accept POL's concessions in relation to each case to which our general conclusions in *Hamilton & others* apply. Those concessions were rightly and properly made. In our judgment, the prosecution of each appellant was unfair (category 1 abuse) and an affront to justice (which we will use in our consideration of the individual appeals as a shorthand for category 2 abuse).

13. We do not think it necessary to go into great detail about the facts of each individual appeal. We summarise the position of each appellant as follows.

Robert Ambrose

14. On 24 September 2012, in the Crown Court at St Albans before HHJ Baker, Robert Ambrose pleaded guilty to one count of fraud. On 26 October 2012, he was sentenced to six months' imprisonment suspended for two years with a requirement to complete 250 hours' unpaid work. On 11 February 2013, a confiscation order was made under the Proceeds of Crime Act 2002 in the sum of £113 (the available amount) to be paid as compensation.

15. The prosecution was based on a shortfall of just under £40,000 following a branch audit. Mr Ambrose appears to have accepted that there was a cash shortage of around £32,000 but did not accept the non-cash shortage that made up the balance. In his interview under caution, he accepted that he had made false entries on the Horizon system to

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cover up the shortfall. He admitted that he had taken £20,000 of POL money in order to recoup the apparent losses through gambling. He attributed the losses to inadequate training on Horizon and to personal problems that he was experiencing at the time.

16. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. Mr Ambrose's case was that, but for the initial unexplained shortfall, he would not have taken any POL money for gambling. POL accepts, therefore, that the prosecution of Mr Ambrose was both unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, Mr Ambrose's conviction is unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash his conviction.

John Armstrong

17. On 21 April 2006, in the Crown Court at Southampton, John Armstrong pleaded guilty to one count of theft. The prosecution alleged that he had stolen £9,226.68. On 16 June 2006, he received a community sentence with a requirement of 200 hours' unpaid work. No confiscation order was made because Mr Armstrong had by then repaid £12,307.68.

18. During an audit on 28 June 2005, Mr Armstrong told auditors that there would be a shortfall of around £9,500 as he was in financial difficulties and had used POL funds to pay staff wages and keep his business running. It would appear that he made similar admissions in his interviews under caution but, owing to the passing of time, the surviving documentation about the prosecution is limited. From what is known of Mr Armstrong's case, POL cannot exclude the possibility that he took POL money only in order to fund Horizon-generated shortfalls.

19. In these circumstances, POL is willing to accept that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. POL accepts, therefore, that the prosecution of Mr Armstrong was both unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, Mr Armstrong's conviction is unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash his conviction.

Timothy Brentnall

20. On 10 June 2010, in the Crown Court at Swansea, Timothy Brentnall pleaded guilty to one count of fraud. On 29 June 2010, he was sentenced to 20 weeks' imprisonment suspended for 18 months with a requirement of 200 hours' unpaid work.

21. Mr Brentnall's branch was audited on 5 November 2009. A shortfall of £16,606.45 was identified based on Horizon records. He told the auditors that he had received "transaction corrections" around 18 months previously which he had not made good. He had been slowly repaying the money but hiding the balance of the shortfall pending full repayment.

22. In a disciplinary interview on 27 November 2009, Mr Brentnall said that he had received two transaction corrections totalling £22,500 relating to the branch ATM. Although a third party operated the ATM, Mr Brentnall was responsible for stocking it with cash and used Horizon to account for it. As he did not have the funds to make good the transaction corrections, he decided to make monthly repayments and to

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disguise the balance which he owed. He maintained that, after the audit, he had discovered a surplus of approximately £15,000 in the retail part of his business. He had repaid the entire alleged shortfall by cheque on the day of the audit.

23. In interview under caution on 4 December 2009, Mr Brentnall acknowledged that he had been mixing POL monies with monies from his shop. He confirmed the £15,000 cash surplus from the shop. POL subsequently rejected a request for disclosure (made on 8 June 2010) relating to ATM and Horizon records on the grounds that the request related to a period that substantially exceeded the indictment period.

24. POL emphasises in its Respondent's Notice that the admitted £15,000 surplus in the shop is an indication that the shortfall identified from Horizon records was a genuine shortfall. Nevertheless, POL is unable to exclude the possibility that a number of high value transaction corrections, over and above the £15,000 shortfall, might have related to previous unexplained shortfalls. Had the defence known about this at the time, Mr Brentnall might have been able to apply to stay the prosecution as an abuse of process or to contest the indictment. On this basis, POL is willing to accept that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. POL accepts, therefore, that the prosecution of Mr Brentnall was both unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, Mr Brentnall's conviction is unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash his conviction.

Gurdeep Singh Dhale

25. On 27 January 2011, in the Crown Court at Bradford before HHJ Benson, Gurdeep Singh Dhale pleaded guilty to one count of false accounting. On 18 March 2011, he was sentenced to 12 months' imprisonment suspended for two years with a requirement of 250 hours' unpaid work.

26. Mr Dhale's branch was audited on 5 June 2008. He immediately informed the auditors that they should expect a shortage in cash of £60,000 or more as he was using POL money to pay a blackmailer. The audit subsequently identified a total shortfall of £168,559.56. On 14 June 2008, Mr Dhale revealed that there was £105,000 cash in a private safe and he delivered that sum to POL on 16 June 2008. When asked about the balance of the shortfall in his interview under caution, Mr Dhale blamed problems with Horizon in processing lottery transactions (which he said generated error notices) and in processing a cheque. He indicated that he had been suffering problems with Horizon since 2007.

27. Records show that Mr Dhale had made 80 telephone calls for help with Horizon including calls about unexplained losses. On some occasions, engineers had attended the branch to check, repair or replace hardware.

28. Mr Dhale's defence statement referred to his belief that the Horizon system was "fundamentally flawed" and was to blame for the shortfalls. He had made false entries on the system to cover up apparent shortfalls but without personal benefit to himself. The defence statement made a number of disclosure requests for material capable of undermining "the integrity/reliability of the Horizon system."

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29. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution case. POL accepts, therefore, that the prosecution of Mr Dhale was both unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, Mr Dhale's conviction is unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash his conviction.

John Dickson

30. On 4 July 2012, in the Crown Court at Nottingham before HHJ Hamilton, John Dickson pleaded guilty to one count of fraud. On 26 July 2012, he was sentenced to eight months' imprisonment suspended for two years with a requirement of 180 hours' unpaid work. On 12 October 2012, a confiscation order was made in the sum of £23,877.02 to be paid as compensation.

31. The shortfall of £23,877.02 to which the indicted charge related was identified from Horizon records during an audit on 14 October 2011. In interview on 3 November 2011, Mr Dickson said that he had been inflating cash declarations to hide shortfalls. He did not know how or why money had started to go missing. When asked about where the money had gone, he replied: "I still think it's in the system somewhere, I really do." In his written basis of plea, he stated that he pleaded guilty "on the basis that he did not steal any of the money found to be missing. He [could not] say whether the money was stolen at all and, if so, by whom."

32. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution case. POL accepts, therefore, that the prosecution of Mr Dickson was both unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, Mr Dickson's conviction is unsafe. We extend time, grant leave to appeal and allow the appeal on Ground 1 and Ground 2. We quash his conviction.

Jerry Hosi

33. On 12 November 2010, in the Crown Court at Snaresbrook, Jerry Hosi was convicted of one count of theft and three counts of false accounting. On the same day, he was sentenced to a total of 21 months' imprisonment. On 5 August 2011, a confiscation order was made in the sum of £3,500. On 31 May 2013, following proceedings in Westminster Magistrates' Court, the confiscation order was varied to £1,000.

34. An audit of Mr Hosi's branch identified a shortfall of £72,107.78. As a result, Mr Hosi and his son Edem Hosi, who worked in the branch with his father, were interviewed under caution by POL investigators. Edem Hosi told the investigators that his father had four or five months earlier (before Edem started work at the branch) told him that there were unexplained shortages. He said that his father was very careful about money as he had worked hard to make a success of his business.

35. In his own interview, Mr Hosi said that he had experienced discrepancies at the branch since he had become the SPM. He could not understand how the losses were occurring. He complained about lack of support from the Horizon Helpline to which he had reported the apparent losses. He said that he had inflated the figures for cash on hand because he did not have sufficient cash to cover the apparent losses. He denied stealing money and blamed the losses on the Horizon system.

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36. As Mr Hosi had blamed Horizon, the POL investigators arranged for Fujitsu Services Limited to undertake hard drive analysis. We have been provided with an extract from the report of the analysis (by Phil Budd of Fujitsu Services) from which we infer that the results were inconclusive. The extract does not strike us as supporting a prosecution. ARQ data was obtained for the period 10 August 2006 to 29 November 2006 and disclosed to the defence.

37. Emails going back to May 2005 (five months before the indictment period) indicate that Mr Hosi had told POL about "major problems balancing" such that he needed "urgent face to face help." POL accepts that it is not clear whether this material was disclosed. Logs from POL's National Business Support Centre show that Mr Hosi made numerous calls categorised as "Horizon balancing."

38. The defence obtained expert evidence to challenge the Horizon evidence. An accountant's report dated 3 December 2009 stated:

> "In the interviews it is clear that the Post Office proceeded with a pre-determined view that Mr Hosi had stolen the allegedly missing money. Other possibilities have been ignored…
>
> In particular, it has not been explored whether there was any missing money in the first place. In other words, no work has been done to ascertain whether the cash imbalance was because of the amount physically to hand was too low (i.e. as the Post Office allege) or because the amount shown on the IT system was too high."

39. The defence also instructed an IT expert. Although there was correspondence complaining about disclosure, it appears that the defence were able to view the material they wanted, though we note that the defence complained about the amount of time they were afforded to do so. Gareth Jenkins was instructed by POL to respond to the expert evidence but no formal expert report or witness statement appears to have been prepared by him. He was not called as a witness at trial. In the event, POL relied at trial on evidence from Phil Budd and others.

40. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution case. POL accepts, therefore, that the prosecution of Mr Hosi was both unfair and an affront to justice. In our judgment, Mr Hosi's convictions are unsafe. We extend time, grant leave to appeal and allow his appeal on Ground 1 and Ground 2. We quash his convictions on all four counts.

Rizwan Manjra

41. On 2 December 2004, in the Crown Court at Preston before HHJ Baker, Rizwan Manjra pleaded guilty to one count of theft and five counts of false accounting. On 28 January 2005, he was sentenced by the same judge to a total of two years' imprisonment.

42. There are very few remaining case papers but records indicate that Horizon was installed in Mr Manjra's branch on 24 May 2000. In conceding the appeal, POL cites an internal POL spreadsheet which refers to the case as "an audit deficiency case." On that basis, POL is willing to accept that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution case. POL accepts, therefore, that the prosecution of Mr Manjra was both unfair and an affront to justice. In our

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judgment, notwithstanding his guilty pleas, Mr Manjra's convictions are unsafe. We extend time, grant leave to appeal and allow his appeal on Ground 1 and Ground 2. We quash his convictions on all six counts.

Abiodun Omotoso

43. On 29 August 2008, in the Crown Court at Luton before Recorder Hollander QC and a jury, Abiodun Omotoso was convicted of theft. On 10 October 2008, he was sentenced to two years and four months' imprisonment. On 30 April 2009, a confiscation order was imposed in the sum of £1,651.79.

44. An audit at Mr Omotoso's branch identified a shortfall of £53,358.02 although that figure was subsequently reduced by £3,000 to account for a figure settled centrally. According to POL's records, Mr Omotoso initially told POL that he had borrowed funds for hospital treatment for a family member in Nigeria. In his defence statement, Mr Omotoso said that that account was untrue. He had given an untrue account because he had been told that the true account would not be believed and that if he accepted liability the matter could be dealt with internally. His defence statement said that the losses were due to his own errors and that the computer "showed that he had more cash than he actually did." He stated that he had called the Helpline and followed advice but that this had made the problem worse and the cash figures increased.

45. The defence statement made a series of disclosure requests seeking copies of all branch Horizon records, Helpline records and access to the Horizon system. There was a request for "any information, such as reports, statistics etc, of problems experienced by [others] with correcting errors made on the computer system." The defence were provided with Helpline records and ARQ data for the indictment period and were invited to attend a meeting with the investigating officer to view other material. There were further defence disclosure requests specifically seeking information relating to problems with the Horizon system.

46. As we have noted, Mr Omotoso withdrew his initial account to the auditors in his defence statement and expressly raised Horizon reliability as his defence. POL is willing to accept that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. POL accepts, therefore, that the prosecution of Mr Omotoso was both unfair and an affront to justice. In our judgment, Mr Omotoso's conviction is unsafe. We extend time, grant leave to appeal and allow his appeal on Ground 1 and Ground 2. We quash his conviction.

Carina Price (née Dowland)

47. On about 30 November 2005, in the Crown Court at Bournemouth before Recorder Gibbons QC and a jury, Carina Price (then named Carina Dowland) was convicted of 28 counts of suppression of a valuable security. Each count related to Girobank deposits between 2 October 2003 and 4 May 2004. On 19 January 2006, she was sentenced to nine months' imprisonment suspended for two years.

48. Records available to POL indicate that Horizon was installed at her branch on 1 August 2000. There is however a very great paucity of information about her prosecution. Her Grounds of Appeal say that a total shortfall of £19.355.97 was identified at her branch on audit. Her Grounds say that she did not raise the reliability of Horizon as a potential

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cause of the shortfall either at the audit or in interview. The Respondent's Notice states that POL is "not in a position to know the extent to which Horizon evidence was relied on as part of the prosecution case" and that POL cannot therefore assert that the reliability of Horizon was not essential to the prosecution and conviction. Accordingly, POL does not dispute that the convictions are unsafe. POL accepts that the prosecution of Mrs Price was both unfair and an affront to justice. In our judgment, Mrs Price's convictions are unsafe. We extend time, grant leave to appeal and allow her appeal on Ground 1 and Ground 2. We quash her convictions on all 28 counts.

Sami Sabet

49. Sami Sabet was the SPM at Mill Lane, Portslade, Brighton and at East Beach, Shoreham-by-Sea. On 26 June 2009, in the Crown Court at Lewes, he pleaded guilty to two counts of fraud. Count 1 reflected an alleged £26,797.78 shortfall at Mill Lane. Count 2 reflected an alleged £23,821.39 shortfall at East Beach. On 7 August 2009, Mr Sabet was sentenced to 12 months' imprisonment suspended for two years with a requirement of 180 hours' unpaid work.

50. The alleged shortfalls were identified on 17 March 2008 during audits of the respective branches. In interview, Mr Sabet explained that he had started to receive error notices at the branches about two years previously. He had disputed many of the notices but would not receive a reply. He had paid £30,000 to satisfy error notices while still challenging them, even to the extent of writing to POL's then Managing Director (Alan Cook). POL continued to demand money. He was given time to pay but was in financial difficulties which caused him to take POL monies to cover his bills and to inflate the cash figures in the accounts. He had intended to repay POL.

51. Pressed in interview about Horizon errors, he said: "the Post Office errors are a big factor because in the last 2 years they amounted to over £30,000 and it put me in a cash flow problem…" The defence made substantial requests for disclosure but it is no longer known whether POL replied.

52. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. POL accepts, therefore, that the prosecution of Mr Sabet was both unfair and an affront to justice. In our judgment, notwithstanding his guilty pleas, Mr Sabet's convictions are unsafe. We extend time, grant leave to appeal and allow his appeal on Ground 1 and Ground 2. We quash his convictions on both counts.

Hasmukh Shingadia

53. On 24 June 2011, in the Crown Court at Oxford, Hasmukh Shingadia pleaded guilty to one count of fraud. On 21 July 2011, he was sentenced to eight months' imprisonment suspended for 12 months with a requirement of 200 hours' unpaid work. An alternative count of theft was left on the file. No confiscation order was made because Mr Shingadia had repaid the alleged £16,180.60 shortfall by the time of the hearing.

54. The shortfall was identified from Horizon records during an audit on 25 March 2010 undertaken prior to the installation of the new Horizon Online System at the branch. Mr Shingadia told the auditor that he did not know the cause of the shortfall. When

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interviewed under caution on 11 May 2010, he agreed that he had made false declarations to cover up the shortfall but was adamant that no money had been stolen.

55. In his written basis of plea, Mr Shingadia accepted that he had experienced cash flow problems in early 2009 and took money to pay bills, inflating the amount of cash recorded in order to cover up losses. He said that he had been "particularly hit by the closure of a local garage" from which he had derived much trade. He gave a similar account to the Probation Service for the purposes of a pre-sentence report, saying that he had taken around £2,000 from POL to cover a shortfall in the retail part of his business. In 2009, after recovering from serious illness, he had taken money to the value of £16,000.

56. The Respondent's Notice states that the basis of plea and account to the Probation Service amount to unequivocal admissions of theft, and thus provide evidence of an actual shortfall that is not dependent on Horizon reliability. Nonetheless, POL accepts that Mr Shingadia's account in interview was such as to place the reliability of Horizon in issue. He was entitled to the investigation of Horizon issues and to relevant disclosure prior to his arraignment. POL concedes that that did not take place. Had it taken place, Mr Shingadia may have applied to stay the indictment prior to his plea and admissions. On this basis, POL concedes that this should be treated as an unexplained shortfall case and that evidence from Horizon was essential to the prosecution. POL accepts, therefore, that the prosecution of Mr Shingadia was both unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, Mr Shingadia's conviction is unsafe. We extend time, grant leave to appeal and allow his appeal on Ground 1 and Ground 2. We quash his conviction.

Malcolm Watkins

57. On 19 March 2003, in the Crown Court at Cambridge before HHJ Howarth, Malcolm Watkins pleaded guilty to one count of theft of £47,638,24. He was sentenced on the same day to a sentence of 18 months' imprisonment suspended for 18 months. There was no order for confiscation because Mr Watkins had by then paid the sum in question.

58. It appears that a shortfall of £66,189.08 was identified from Horizon records at an audit on 12 September 2003 but the figure was later reduced following the processing of an error notice. Mr Watkins initially told the auditor that his accounts were a "mess" and that there would be a shortage in the region of £30,000. There is no longer any full transcript of Mr Watkins' interview under caution nor does the interview tape survive. The summary of the interview suggests that Mr Watkins was clear that he did not steal from POL and that he attributed the shortfall to his making mistakes. The interviewing officer, however, considered that Mr Watkins had admitted to using POL money to pay staff wages, amounting to theft. Given the paucity of records, POL has very properly decided not to rely on the interview summary as providing evidence of theft.

59. POL is willing to accept that this was an unexplained shortfall case and that evidence from Horizon was essential to the prosecution case. POL accepts, therefore, that the prosecution of Mr Watkins was both unfair and an affront to justice. In our judgment, notwithstanding his guilty plea, Mr Watkins' conviction is unsafe. We extend time, grant leave to appeal and allow his appeal on Ground 1 and Ground 2. We quash his conviction.

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Conclusion

60. It was for those reasons that we ordered that in each of the cases of Robert Ambrose, John Armstrong, Timothy Brentnall, Gurdeep Singh Dhale, John Dickson, Jerry Hosi, Rizwan Manjra, Abiodun Omotoso, Carina Price (née Dowland), Sami Sabet, Hasmukh Shingadia and Malcolm Watkins:

    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.