

IN THE CROWN COURT
AT SOUTHWARK

POST OFFICE LIMITED ('POL')

-v-

PARMOD KALIA

&

OYETEJU ADEDAYO

RESPONDENT'S NOTE FOR THE HEARING ON 14 MAY 2021

Introduction

1. This note is intended to assist the Court in relation to the appeals of Mr Kalia and Mrs Adedayo referred to the Crown Court by the Criminal Cases Review Commission ('CCRC') on 13 January 2021. Both appellants pleaded guilty in the Magistrates' Court:
 - a) On 17 December 2001, at Bromley Magistrates' Court, Mr Kalia pleaded guilty to one charge of theft (amount £22,202.01). The case was sent to Croydon Crown Court for sentence. On 8 March 2002, he was sentenced to 6 months' imprisonment.
 - b) On 19 January 2006, at Medway Magistrates' Court, Mrs Adedayo pleaded guilty to three charges of false accounting (amount £52,864.08) and accepted 10 further offences of false accounting which were set out in a 'Taken Into Consideration

(TIC) schedule.¹ The case was sent to Maidstone Crown Court for sentence and on 2 March 2006 the Court imposed 50 weeks' imprisonment suspended for 2 years with conditions of 12 months' probation and 200 hours unpaid work.

2. As the Court is aware, neither of these appeals is opposed. That decision was communicated to the Court and both Appellants by letter on 30 April 2021.

Background

3. These appeals form part of a larger number of cases referred by the CCRC to either the Crown Court or the Court of Appeal Criminal Division ('CACD'). Common to all those referrals was the CCRC's view that the Post Office prosecuted each Appellant on the basis that evidence of shortfalls in their branch accounts derived from its Horizon accounting system was robust and reliable, but failed to investigate and disclose the existence of bugs, errors and defects in Horizon. The CCRC therefore considered that, in respect of appeals from the Magistrates' Court, there was a real possibility that the Crown Court would set aside their pleas of guilty and would stay any further proceedings against them as an abuse of process.
4. Six of those appeals were heard by this Court on 11 December 2020. Mr Kalia's and Mrs Adedayo's cases were not part of that initial tranche of Appellants because, on 3 June 2020, the CCRC provisionally refused the Appellants' applications to review their convictions on the basis that both had made admissions in interview such that the CCRC were of the view that the applicants' confessions meant their applications should be provisionally refused.
5. Subsequent to that provisional decision, the CCRC received further submissions and/or documentation which led the CCRC to consider whether there were circumstances which might render the applicant's confession unreliable, pursuant to s. 76 PACE 1986. The CCRC

¹ Mrs Adedayo's TICs reflected the fact she submitted false accounts on a weekly basis between 8 June -24 August 2005.

came to the view that there was a real possibility a Court would exclude Mr Kalia's and Mrs Adedayo's confessions as being unreliable and that, in the event that the plea were set aside and the confession excluded, at the trial, a defence application for proceedings to be stayed as an abuse of process would be successful.

Preliminary issue - setting aside the plea

6. On 11 December 2020, this court accepted POL's submission that the effect of s. 11(2) and (4) of the Criminal Appeal Act 1995 was such that a CCRC referred Appellant does not have to apply to set aside their guilty plea. We would invite the court to adopt this approach in these cases and for all future appeals.

Application of the CACD judgment in *Hamilton & Others v POL* [2021] EWCA Crim 577

7. In its judgment, handed down on 23 April 2021, the CACD distinguished between 'Horizon cases' which, due to POL's failures of investigation and disclosure at the time of the original proceedings, were an abuse of process under both categories of abuse; and those which were not and, therefore, where no such abuse of process arose. The Court defined an 'Horizon case' as one in which the reliability of Horizon was essential to the prosecution of the Appellant, typically where there was no other evidence of the shortfall other than what Horizon showed.

Respondent's decision in respect of these appeals

8. On 30 April 2021, POL wrote to Southwark Crown Court and the Appellants to indicate that it would not contest the appeal in each of their respective cases. POL stated that, having considered the High Court judgments, the CCRC's reasons for referring the case, the judgment in *Hamilton & Others v POL* and the papers available in each individual's case, POL considered that the Full Code Test in the Code for Crown Prosecutors ('the Code') was not met.

9. As set out in those letters, applying the test in Hamilton & Others v POL to the circumstances of the case, in particular the full confessions made by each Appellant in the original proceedings, POL considers that the reliability of Horizon data was not essential to the original prosecution and conviction of either appellant. Neither does POL accept that their confessions were made as a consequence of anything said or done that was likely, in the circumstances existing at the time, to render them unreliable.

10. POL has however paid particular attention to the part of the Code which requires the prosecution to consider whether the public interest now requires there to be a prosecution. The Code sets out a number of public interest factors (at paragraphs 4.14 (a) to (g)). Having considered those public interest factors in respect of the facts and circumstances of the case and, in particular, whether prosecution is a proportionate response bearing in mind the age of the case and the fact that both Appellants have already served the sentences imposed upon them, POL has determined that a prosecution is not required in the public interest.

11. For the reasons outlined above, the Respondent therefore intends to offer no evidence in relation to each of the Appellants.

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12 May 2021