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Neutral Citation Number: [2021] EWCA Crim 577

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Case No 202001558 B3
(and 41 other linked cases)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/04/2021

Before:

LORD JUSTICE HOLROYDE
MR JUSTICE PICKEN
and
MRS JUSTICE FARBEY DBE

- -

IN THE MATTER OF A REFERENCE BY
THE CRIMINAL CASES REVIEW COMMISSION

Between:

JOSEPHINE HAMILTON & OTHERS	**Appellants**
- and –	
POST OFFICE LIMITED	**Respondent**

- -
- -

Hearing dates: 22, 23, 24 & 25 March 2021

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APPEARANCES

Mr T Moloney QC and Miss K O'Raghallaigh appeared on behalf of the Appellants: Josephine Hamilton (202001558 B3), Gail Ward (202001559 B3), Julian Wilson (deceased) (202001561 B3), Hughie Thomas (292001562 B3), Jacqueline McDonald (202001563 B3), Allison Henderson (202001564 B3), Alison Hall (202001566 B3), Della Robinson (202001572 B3), Khayyam Ishaq (202001573 B3), David Thomas Hedges (202001574 B3), Damien Owen (202001577 B3), Mohammed Rasul (202001578 B3), Wendy Buffrey (202001579 B3), Kashmir Gill (202001580 B3), Barry Capon (202001582 B3), Wendy Cousins (202001584 B3), Lynette Hutchings (202001585 B3), Lisa Brennan (202001589 B3), William Graham (202001591 B3), Siobhan Sayer (202001592 B3), Tim Burgess (202001593 B3), Pauline Thomson (202001594 B3), Nicholas Clark (202001595 B3), Margery Williams (202001987 B3), Tahir Mahmood (202001988 B3), Ian Warren (202001989 B3), David Yates (202001990 B3), Harjinder Butoy (202001991 B3), Gillian Howard (202001992 B3), David Blakey (202001993 B3)

Ms L Busch QC and Dr S Fowles appeared on behalf of the Appellants: Tracy Felstead (202001565 B3), Janet Skinner (202001567 B3), Seema Misra (202001571 B3)

Mr S Stein QC and Mr L Orrett appeared on behalf of the Appellants: Scott Darlington (202001568 B3), Peter Anthony Holmes (deceased) (202001575 B3), Rubina Shaheen (202001576 B3), Stanley Fell (202001569 B3), Pamela Lock (202002979 B3)

Mr S Patel QC and Mr B Smith appeared on behalf of the Appellant: Vijay Parekh (202001583 B3)

Mr B Gordon appeared on behalf of the Appellant: Dawn O'Connell (deceased) (202001586 B3)

Mr O Saxby QC and Mr B Irwin appeared on behalf of the Appellant: Carl Page (202001588 B3)

Mr C Millington QC and Mr R Chand appeared on behalf of the Appellant: Neelam Hussain (202001590 B3)

Mr B Altman QC, Miss Z Johnson QC, Mr S Baker QC, Miss J Carey, Miss C Brewer and Miss H Jones appeared on behalf of the Respondent: Post Office Legal Services

Approved Judgment

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Lord Justice Holroyde:

1. This judgment, to which each member of the court has contributed, concerns forty-two men and women who were employed by Post Office Limited, or its predecessors the Post Office and Post Office Counters Limited, as sub-postmasters, sub-postmistresses, managers or counter assistants. They were all prosecuted by their employer and convicted of crimes of dishonesty. Many years later, their cases have been referred to this court by the Criminal Cases Review Commission ("CCRC"). We have to decide whether their prosecutions were an abuse of the process of the court and whether their convictions are unsafe. In particular, we must consider issues as to the reliability of the computerised accounting system, "Horizon", which was in use in branch post offices during the relevant period.

2. For convenience, we shall refer to each of the forty-two persons as an appellant, and to each reference as an appeal. For the purposes of these appeals, nothing turns on any distinction between the Post Office, Post Office Counters Limited and Post Office Limited, and nothing turns on any distinction between the positions of sub-postmaster, sub-postmistress, manager or counter assistant, or between the locations of the appellants' places of work. We shall therefore refer to all the appellants as "SPMs", to their places of work as "post offices" or "branches", and to their employer as "POL". As POL was the prosecuting authority in each case, we shall use the same abbreviation when referring to the respondent to these appeals.

Introduction:

3. SPMs run branch post offices. Depending on the size of the branch, they may employ counter assistants. Often, the branch post office is situated inside a shop or other business, and the SPM is also, but separately, the proprietor of that business. Branch post offices, and their SPMs, play a key role in the lives of local communities.

4. The appellants were convicted between 2003 and 2013, of offences committed during the period 2000-2012. All prosecutions in this country are brought in the name of the Queen, but each of these cases was commenced and pursued by POL acting as a private prosecutor. Royal Mail Group was the prosecuting authority prior to 1 April 2012, when POL became a separate body and took over the prosecutorial function. However, nothing turns on that change. The appellants were variously charged with offences of theft, fraud and false accounting. They either pleaded guilty to, or were convicted of, such offences. Inevitably, their convictions resulted in not only the sanctions imposed by the court, including in many cases sentences of immediate imprisonment, but also the loss of their previous good character and consequent social disgrace. Very sadly, three of the appellants – Julian Wilson, Peter Holmes and Dawn O'Connell – have not lived to see the outcome of their appeals.

5. All of the appellants contend that their convictions are unsafe, in essence because they were prosecuted and convicted on the basis that Horizon was reliable, when in fact it was not. The CCRC referred the cases because it considered that two cogent lines of argument in relation to abuse of process were available to each appellant: first, that the reliability of Horizon data was essential to the prosecution and conviction, and it was not possible for the trial process to be fair; and secondly, that it was an affront to the public conscience for the appellant to face criminal proceedings.

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6. In making its referrals, the CCRC gave close consideration to findings made by Mr Justice Fraser ("Fraser J") in group litigation proceedings in the High Court between claimants representing about 580 SPMs, and POL. Fraser J gave a number of judgments, including in particular his judgments number 3, "Common Issues"[1] and number 6, "Horizon Issues"[2]. He was not directly concerned with any criminal proceedings. However, as will be seen, his findings of fact have provided the factual basis of these appeals.

7. The hearing of these appeals occupied four full days, and reference was made to many documents. We have read all of those documents, and have considered all of the submissions, though we will not refer to all of them. Although many of the points are of general application to all or most of the appellants, we bear very much in mind that we are concerned with forty-two individuals. Their cases require, and have received, individual consideration.

8. We begin by summarising the relevant features of the Horizon system. We shall then refer to some of the findings made by Fraser J, to the procedural history of these appeals, and to evidence available to this court which was not available to Fraser J. Following the course taken during the hearing of the appeals, we shall summarise the submissions of the parties and our conclusions on general issues, before turning to individual cases.

The Horizon system:

9. The Horizon system is an electronic point of sale and accounting system. It was designed and installed by ICL, which was taken over by Fujitsu Limited in about 2002. Again, nothing turns on that change, and we shall simply refer throughout to "Fujitsu". The system was piloted in 1999, and rolled out to branch post offices in 2000. Some of the appellants were already employed as SPMs long before the system was installed.

10. The Horizon system provided a computerised system of accounting within branch post offices, and between the branches and POL. It was initially operated via a telephone line, but in 2010 that system was superseded by an online version, the first iteration of which was known as HNG-X. We shall refer to the earlier version as "Legacy Horizon", to the later version as "Horizon Online" or "HNG-X", and to the system generally as "Horizon".

11. By recording all transactions at a branch, Horizon calculated how much cash and stock should be held in the branch. SPMs were required to make a daily declaration of the amount of cash held at the branch. At the end of a trading period (initially one week, latterly a four- to five-week period), the SPM was required to complete a Branch Trading Statement: the branch could not enter (or "roll over" into) a new trading period without the SPM declaring to POL the completion of that statement.

12. Once Horizon had been installed in a branch, the SPM was obliged to use it: it was not possible to opt out. POL operated a Network Business Support Helpline ("the Helpline") which was provided and recommended to SPMs as a primary source of

[1] [2019] EWHC 606 (QB)
[2] [2019] EWHC 3408 (QB)

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advice and assistance in respect of Horizon and in respect of errors and issues relating to their trading statements and accounts.

13. There was no facility within the Horizon system for SPMs to dispute Horizon's figures: they were required instead to contact the Helpline. If at the end of a trading period there was a discrepancy or shortfall between the cash on hand and the figures generated by Horizon, the SPM was required to make good any shortfall, either by putting in his or her own money ("settling in branch") or by asking for the sum to be deducted from his or her future income ("settling centrally"). The prosecutions of the appellants for the most part began when POL auditors found such a shortfall.

14. POL had a contractual right to seek recovery from SPMs for losses relating to branch accounts. The precise terms and legal effect of the relevant contractual provisions were considered in detail by Fraser J in his "Common Issues" judgment. For our present purposes, it suffices to say that 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. Some of the appellants did so, using their own funds, or borrowing, to make good a loss for which they did not in fact accept responsibility. Others resorted to offences of false accounting in order to cover up a shortfall for which they did not accept responsibility and which they were unable to make good.

15. Fujitsu held audit data ("ARQ data"), which contained a complete and accurate record of all keystrokes made by an SPM or an assistant when using Horizon. It was therefore possible to refer to the audit data to track every transaction recorded on Horizon.

16. It eventually emerged in the High Court litigation that Fujitsu also had the ability to amend Horizon data in relation to a branch without the knowledge of the SPM concerned.

17. Fujitsu recorded bugs, errors and defects in two types of document. If an SPM phoned the Helpline, and was referred to the section of Fujitsu which investigated such matters, a document known as a PEAK would be created. The PEAKs would feed into a higher-level document, a Known Error Log ("KEL").

18. POL had a contractual right to obtain any of the information about Horizon which was held by Fujitsu. Some of the appellants sought disclosure of ARQ data. However, Fraser J heard no evidence to suggest that either PEAKs or KELs had been disclosed by POL in any civil litigation or any criminal prosecution before the High Court proceedings. This court is in the same position. In the prosecutions of these 42 appellants, so far as we are aware, there was no disclosure of any such document.

Concerns about Horizon:

19. The initial roll-out of Horizon was delayed by technical issues. From an early stage of its introduction, some SPMs were experiencing, and reporting, discrepancies and shortfalls in their branch accounts which they considered were caused by faults in Horizon. The case later advanced by the claimants in the High Court proceedings, and by the appellants in these appeals, is that Horizon has throughout been affected by bugs, errors and defects, and that faults in the system caused it to overstate the amount of cash

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or stock which should be held at a particular time, thereby causing an apparent and unexplained shortfall in branch accounts.

20. POL, however, maintained for many years that Horizon was reliable. It accepted the Horizon data as establishing that money was missing: i.e., that there was an actual shortfall of cash held in the branch, not merely an apparent shortfall generated by Horizon. POL treated the shortfall as having been caused by dishonesty, or at best carelessness, on the part of the SPM, and demanded repayment by the SPM. POL's stance was that it was up to an individual SPM to prove that a shortfall was not his or her responsibility: if the SPM could not do so, he or she would have to make good the shortfall. The scale of such shortfalls is indicated by the fact that, in the High Court proceedings, the total amount of losses claimed by the claimants was about £18 million.

21. Fraser J found, and we accept, that when unexplained shortfalls and discrepancies were challenged by SPMs through the Helpline, POL would treat those shortfalls as undisputed debts. At most, an SPM might be offered time to pay the asserted debt by deductions from his remuneration over the next 12 months. Even if an SPM resigned his employment, he would – so far as POL was concerned – still owe the disputed sum.

22. As we have said, Fraser J in his "Common Issues" judgment considered in detail the nature of the contractual relationship between an individual SPM and POL. For the purposes of these appeals, it suffices to say that we accept that – whatever the correct legal analysis of the contract – all these appellants understood, and were led by POL to understand, that they were required to make good any shortfall shown by Horizon, whether or not they accepted that there was a genuine shortfall, and whether or not there was any negligence or dishonesty on their part. They further understood, and were led to understand, that they would be liable to be dismissed if they did not do so.

23. In 2009 a periodical, Computer Weekly, published a report referring to problems with the Horizon system. Also in 2009, two Members of Parliament reported their constituents' concerns about Horizon to the then Minister of Postal Affairs and Employment Relations, who in turn forwarded the letters to the Managing Director of POL.

24. In August 2010 Rod Ismay, POL's Head of Product and Branch Accounting, prepared a report entitled "Horizon – Response to Challenges Regarding Systems Integrity". Those to whom the report was copied included POL's Head of Criminal Law. In summary, the report stated that Horizon (both Legacy and Online) was robust, and that the prosecutions which had given rise to adverse comments were cases in which "we remain satisfied that this money was missing due to theft in the branch". It noted that the record of prosecutions supported the assertion that the SPMs had been guilty rather than Horizon being faulty, but observed that this "does not stop speculation about the system". It went on to consider the merits of an independent review, not because of any doubt about Horizon but in order to help give others "the same confidence that we have". The decision was that, no matter what opinions might be obtained, "people will still ask 'what if?' and the defence will always ask questions that require answers beyond the report". Mr Ismay went on to give this warning:

> "It is also important to be crystal clear about any review if one were commissioned – any investigation would need to be disclosed in court. Although we would be doing the review to

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> comfort others, any perception that POL doubts its own systems would mean that all criminal prosecutions would have to be stayed. It would also beg a question for the Court of Appeal over past prosecutions and imprisonments."

25. In the event, several more years passed before POL did commission an independent review.

26. In July 2012 POL appointed Second Sight Support Services Limited ("Second Sight") to conduct a review into problems with Horizon. Second Sight concluded that in some circumstances Horizon could be systemically flawed from a user's perspective, and that POL had not necessarily provided an appropriate level of support.

27. From about March 2015 onwards, convicted SPMs began to make applications to the CCRC, seeking to challenge their convictions. In summary, they contended that evidence was now available concerning failings in Horizon and the response of POL to those failings, which was relevant to the safety of their convictions. The CCRC, aware of the civil proceedings between SPMs and POL, understandably took time to consider the applications and the judgments of Fraser J.

28. Also from about 2015, POL ceased to conduct its own prosecutions, and the Crown Prosecution Service became the prosecuting authority in relation to alleged offences by SPMs and other POL employees.

29. In 2017 a Group Litigation Order was made in the High Court litigation. Six lead claimants were identified, but the issues affected all the many hundreds of claimants. In Fraser J's phrase, it was "bitterly contested" litigation. POL continued to assert that Horizon was a robust system and could be relied upon.

30. At the end of 2019, shortly before Fraser J handed down his "Horizon Issues" judgment, the claimants and POL agreed terms of settlement.

31. We should add for completeness that a public inquiry chaired by Sir Wyn Williams, President of Welsh Tribunals, is currently considering what went wrong in relation to Horizon. It will draw on evidence from Fraser J's judgments and the experiences of affected SPMs and will identify what key lessons must be learned for the future. It expects to submit its findings and recommendations later this year. The terms of reference of the Inquiry do not include POL's prosecution function or matters of criminal law.

32. Fraser J, to whose industry we pay tribute, considered a mass of documents and heard oral evidence, both factual and expert, over many days. His "Common Issues" and "Horizon Issues" judgments, together with a Technical Appendix to the latter, amounted to more than 500 pages. It is unnecessary, for the purposes of these appeals, for this court to go into similar detail. We must however refer to some of his key findings.

Findings made by Fraser J:

33. In his "Common Issues" judgment, Fraser J found that POL, in demanding repayment of a shortfall shown by Horizon, misstated the factual and legal liability of an SPM to

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make good any losses. In summary, it was contended in the civil litigation that the contract between an SPM and POL made the former responsible for all losses caused through his own negligence, carelessness or error and for losses of all kinds caused by his assistants. POL however repeatedly asserted that SPMs were liable to make good any losses incurred during their terms of office. In relation to the correspondence which POL had sent to one of the lead claimants, Fraser J at [222] expressed himself in strong terms:

> "There can be no excuse, in my judgment, for an entity such as the Post Office to misstate, in such clearly express terms, in letters that threaten legal action, the extent of the contractual obligation upon a SPM for losses. The only reason for doing so, in my judgment, must have been to lead the recipients to believe that they had absolutely no option but to pay the sums demanded. It is oppressive behaviour."

34. Fraser J's conclusions in that judgment included the following:

> "1111. The Post Office describes itself on its own website as "the nation's most trusted brand" … . So far as these Claimants, and the subject matter of this Group Litigation, are concerned, this might be thought to be wholly wishful thinking. Trust is an element of an obligation of good faith, a concept which I find is to be implied into the contracts between the Post Office and the SPMs because they are relational contracts. The Post Office asserts that its brand is trusted by the nation, but the SPMs who are Claimants do not trust it very far, based on their individual and collective experience of Horizon."
>
> …
>
> 1115. Horizon was introduced in 2000, and from then onwards unexplained discrepancies and losses began to be reported by SPMs. Internal documents obtained in this litigation show that some personnel within the Post Office believed at the time that at least some of these were caused by Horizon. Some of these are identified at [542] above. The first document in that paragraph of this judgment dates from November 2000. At [41] I deal with part of an internal Post Office report from as recently as June 2014 – other parts have been redacted – that make it clear that steps had to be taken within the Post Office to "ensure consistency of accounts and enable a higher chance of detecting errors in accounts due to problems with Horizon". The Post Office's position in this litigation remains that Horizon is what is called "robust" and that none of the Claimants experienced shortfalls or discrepancies in their branch accounts due to problems caused by Horizon. Further consideration of this will occur in subsequent judgments and after the Horizon Issues trial."

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35. Fraser J subsequently considered the operation, functionality and reliability of the Horizon system itself in his Judgment number 6 – "Horizon Issues".

36. As we have noted, the default position adopted by POL was that an SPM must be responsible for any shortfall in accounts which could not be explained. As an illustration of POL's refusal to accept any fault in Horizon, Fraser J at [209] of his "Horizon Issues" judgment referred to reports to Fujitsu in around 2000 of "phantom sales" which appeared to be caused by hardware issues. He noted at [210] that such transactions were the subject of a PEAK dated 17 April 2001 which related to multiple branches and recorded the dissatisfaction of more than one SPM as to the failure to investigate and resolve the issues. The PEAK also recorded that at one of the branches which had reported such issues, Royal Mail's own engineers had attended to try to rectify the problem and had actually seen the phantom transactions, so it was no longer "just the [S]PM's word". Fujitsu had nonetheless concluded that there was no fault in their product and the explanation for any phantom transactions lay in operator error – a conclusion which Fraser J found, at [213], to be "simply and entirely unsupportable".

37. In July 2013 an SPM reported that Horizon had "put a phantom cheque on the cheque line". The SPM spoke of going to his MP. An internal email asked whether this "alleged flaw" should be investigated "to pre-empt any enquiries from his MP". A senior POL official replied that the claim could not be investigated without further details and Fujitsu involvement, and stated:

> "My instinct is that we have enough on with people asking us to look at things."

38. Fraser J was highly critical of that response. He said, at [219]:

> "In my judgment, the stance taken by the Post Office at the time in 2013 demonstrates the most dreadful complacency, and total lack of interest in investigating these serious issues, bordering on fearfulness of what might be found *if* they were properly investigated."

39. Fraser J went on to refer to the problems experienced with Horizon "almost from the outset". One of the documents which was referred to in evidence was a heavily-redacted "Extract from Lessons Learned Log" of November 2015, in which a POL official acknowledged there had been a "failure to be open and honest when issues arise eg roll out of Horizon".

40. Fraser J referred to two particular bugs, known as the Callendar Square bug and the Receipts and Payments Mismatch ("RPM") bug. In his "Common Issues" judgment at [541], he had described the RPM bug as one of the bugs in respect of which contemporaneous internal documents showed "at least to some degree, an awareness of Horizon problems within the Post Office itself over a number of years". In his "Horizon Issues" judgment at [428] he referred to a note which he found was written in 2010 and which was considered at a meeting attended by personnel from both Fujitsu and POL.

41. The note indicated that the RPM bug was currently affecting about 40 branches: there had at that point been no communication with the branches affected, and it was not

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believed that they were exploiting the bug intentionally. Three possible solutions were proposed, and the note indicated the risks associated with each of those proposals:

i) Solution 1 was to alter the Horizon branch figure at the counter to show the discrepancy. This would involve Fujitsu manually writing an entry value to the local branch account. The identified risk was:

> "This has significant data integrity concerns and could lead to questions of 'tampering' with the branch system and could generate questions around how the discrepancy was caused. This solution could have moral implications of Post Office changing branch data without informing the branch."

ii) Solution 2 was to "journal values from the discrepancy account into the Customer Account and recover/refund via normal processes". The identified risk was:

> "Could potentially highlight to branches that Horizon can lose data."

iii) Solution 3 was not to correct the data in the branches and to write off the loss. The identified risk was:

> "Huge moral implications to the integrity of the business, as there are agents that were potentially due a cash gain on their system."

42. Unsurprisingly, Fraser J described this record as "a most disturbing document in the context of this group litigation". He continued, at [429]:

> "It is a 2010 document and issues between the Post Office and many SPMs concerning the accuracy of Horizon had, for Legacy Horizon, gone on for a decade (2000 to 2010) and these continued under Horizon Online (introduced in 2010). Under "Impact", some of the bullet points incorporate a summary of these issues.
>
> '• The branch has appeared to have balanced, whereas in fact they could have a loss or a gain.
>
> • Our accounting systems [ie Horizon or the Post Office's] will be out of sync with what is recorded at the branch
>
> • If widely known could cause a loss of confident [sic] in the Horizon System by branches
>
> • Potential impact upon ongoing legal cases where branches are disputing the integrity of Horizon Data
>
> • It could provide branches ammunition to blame Horizon for future discrepancies.'" [emphasis added by Fraser J]

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43. Another document relating to the same bug referred to a BBC documentary broadcast in February 2011, which reported on SPMs being unhappy about being pursued for losses on Horizon, and to "ongoing legal cases". Fraser J concluded at [433] that those references showed that there was –

> "a distinct sensitivity within both the Post Office and Fujitsu about keeping this information to themselves in order to avoid a "loss of confidence" in Horizon and the integrity of its data. A less complimentary (though accurate) way of putting it would be to enable the Post Office to continue to assert the integrity of Horizon, and avoid publicly acknowledging the presence of a software bug."

44. Fraser J went on to note, in relation to a number of the bugs found in Horizon, that POL did not communicate the existence of a bug to all SPMs or even to SPMs whose branches were known to have been affected by it. He found POL's approach to this in the proceedings before him to be "simply extraordinary". He referred at [442] to a number of points which –

> "… all lead to the same conclusion in my judgment, namely that the Post Office ought to have notified, at the very least, all those SPMs whose branch accounts had been impacted by this bug that this had occurred, and that it had occurred as a result of a software bug. The fact that the integrity of Horizon data was a live issue at this time should not have influenced the decision to notify SPMs of a software bug. Further, the Post Office's explanation in its submissions that SPMs had their accounts "corrected in the ordinary course" is not a suitable phrase, unless by "ordinary course" one means keeping the cause or reason for the correction secret and therefore hidden from the other party in the accounting transaction, namely the SPM."

45. The claimants' case in the civil litigation was that POL should have referred to the audit data when there was a dispute between it and an SPM as to what had occurred in Horizon. The evidence made clear that POL did not use audit or ARQ data, which would have involved an expenditure of time and money in obtaining the data from Fujitsu, and instead consulted management data. Fraser J at [911] accepted that it was not necessary to consult the audit data in every case where a transaction correction was considered. But, he said, it should be consulted when there was a dispute between POL and an SPM about a branch account and about who or what was to blame, and he could think of no sensible reason not to consult the audit data in such a scenario. He continued:

> "The evidence in both this trial, and the Common Issues trial, where the Post Office cross-examined a number of SPMs on events in their branch accounts by using a variety of management information, other than the audit data, makes clear to me just how important it is to use the audit data, rather than other sources including management information. The management information is confusing, contradictory, has been shown to be wrong and requires numerous assumptions or a "take it from me"

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> type of approach on the part of a questioner. It is rarely agreed what that management data shows. The audit data, by its very nature, will be far superior and the best evidence available of what has occurred on Horizon. It should be consulted in circumstances where there is a dispute between the Post Office and a SPM."

46. Fraser J later referred to part of the evidence of a witness called before him, Mr Latif, who described how he had performed some basic, routine steps to transfer a sum of £2,000 between terminals, only to find that the sum disappeared from the Horizon system. Mr Latif had been a trainer, entrusted by POL to train other SPMs. His evidence was nonetheless challenged by POL, whose witness on this point asserted that the sum could not have disappeared as Mr Latif had described. Fraser J accepted Mr Latif's evidence and at [928]-[929] expressed his view as follows:

> "928. The approach by the Post Office to the evidence of someone such as Mr Latif demonstrates a simple institutional obstinacy or refusal to consider any possible alternatives to their view of Horizon, which was maintained regardless of the weight of factual evidence to the contrary. That approach by the Post Office was continued, even though now there is also considerable expert evidence to the contrary as well (and much of it agreed expert evidence on the existence of numerous bugs).
>
> 929. This approach by the Post Office has amounted, in reality, to bare assertions and denials that ignore what has actually occurred, at least so far as the witnesses called before me in the Horizon Issues trial are concerned. It amounts to the 21st century equivalent of maintaining that the earth is flat."

47. Although other passages in the judgment were referred to by counsel in these appeals, we do not think it necessary to add to the above extracts. We turn to the conclusions reached by Fraser J.

48. Fraser J found that there were numerous bugs, errors or defects in Horizon which were capable of causing, and did in fact cause, shortfalls in post office branches. He found that the evidence he had heard established 25 different bugs with the potential to impact upon branch accounts, with evidence of actual lasting impact having occurred as a result of 22 of them. Horizon itself did not alert SPMs to the existence of any such bugs, errors or defects. His overall findings included the following:

> "968. … It was possible for bugs, errors or defects of the nature alleged by the claimants to have the potential both (a) to cause apparent or alleged discrepancies or shortfalls relating to Subpostmasters' branch accounts or transactions, and also (b) to undermine the reliability of Horizon accurately to process and to record transactions as alleged by the claimants.
>
> 969. Further, all the evidence in the Horizon Issues trial shows not only was there the potential for this to occur, but it actually

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> has happened, and on numerous occasions. This applies both to Legacy Horizon and also Horizon Online. …
>
> 970. I accept the claimants' submissions that, in terms of likelihood, there was a significant and material risk on occasion of branch accounts being affected in the way alleged by the claimants by bugs, errors and defects. …
>
> …
>
> 978. … In my judgment, there is a material risk that such a shortfall in a branch's accounts was caused by the Horizon system during the years when both Legacy Horizon and HNG-X were in use, which is 2000 to 2010 and 2010 to 2017 respectively. …
>
> …
>
> 983. … there is a material risk for errors in data recorded within Horizon to arise in (a) data entry, (b) transfer or (c) processing of data in Horizon in both the Legacy Horizon and HNG-X forms."

49. Fraser J found that POL did have access to the causes of alleged shortfalls in branches, including whether they were caused by bugs, errors and/or defects in Horizon, albeit that they would rely on Fujitsu to undertake any investigations. He further found, at [1001], that Fujitsu had the ability and facility to insert, inject, edit or delete transaction data or data in branch accounts, to implement fixes in Horizon that had the potential to affect transaction data or data in branch accounts or to rebuild branch transaction data, all without the knowledge or consent of the SPM in question. If Fujitsu injected a transaction into a branch account, "this would look as though the SPM had done it" (at [1004]).

50. He concluded, at [975] and for the reasons which he explained in his Technical Appendix, that Legacy Horizon was -

> "not remotely robust. The number, extent and type of impact of the numerous bugs, errors and defects that I have found in Legacy Horizon makes this clear".

HNG-X was slightly more robust, but still had a significant number of bugs, errors and defects, particularly in the period 2010-2015. The robustness of HNG-X was therefore questionable, and prior to February 2017 did not justify the confidence routinely stated by POL in terms of its accuracy.

51. These and other findings of Fraser J were considered by the CCRC, to whose work we now turn.

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The CCRC:

52. By section 9(1) of the Criminal Appeal Act 1995, where a person has been convicted of an offence on indictment in England and Wales, the CCRC may at any time refer the conviction to this court. The conditions for making a reference are set out in section 13 of the 1995 Act, which so far as material provides:

> "**13.— Conditions for making of references**
>
> (1) A reference of a conviction, verdict, finding or sentence shall not be made under any of sections 9 … unless—
>
> (a) the Commission consider that there is a real possibility that the conviction … would not be upheld were the reference to be made,
>
> (b) the Commission so consider—
>
> (i) in the case of a conviction, … because of an argument, or evidence, not raised in the proceedings which led to it or on any appeal or application for leave to appeal against it, …
>
> and
>
> (c) an appeal against the conviction, verdict, finding or sentence has been determined or leave to appeal against it has been refused.
>
> (2) Nothing in subsection (1)(b)(i) or (c) shall prevent the making of a reference if it appears to the Commission that there are exceptional circumstances which justify making it."

53. We should note that only two of the appellants, Lisa Brennan and Harjinder Butoy, had previously appealed, unsuccessfully, against their convictions. It was however realistically and fairly accepted by POL that there were exceptional circumstances which justified the reference of all the cases to this court, notwithstanding that other appellants had not brought any appeal against their convictions at the time.

54. By section 9(2), a reference of a person's conviction shall be treated for all purposes as an appeal by the person under section 1 of the Criminal Appeal Act 1968 against the conviction. The reasons which the CCRC gave for referring these cases to this court therefore take effect as grounds of appeal, and we must proceed in accordance with section 2(1) of the Criminal Appeal Act 1968:

> "Subject to the provisions of this Act, the Court of Appeal –
>
> (a) Shall allow an appeal against conviction if they think that the conviction is unsafe; and
>
> (b) shall dismiss such an appeal in any other case"

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55. Because different SPMs applied to the CCRC at different times, the CCRC dealt with more than one tranche of referrals and gave more than one statement of its reasons. For our purposes, nothing turns on that. The CCRC considered the cases of each of these appellants in considerable detail. We commend the care and thoroughness with which it did so. In its Statements of Reasons for the referrals, the CCRC summarised the principal points raised by the SPMs as including the following:

    i) POL could not show that the Horizon figures were correct, nor could they show when or how the alleged shortfalls occurred.

    ii) There was no direct evidence that the applicants had stolen any money.

    iii) The applicants had no choice but to falsify accounts: they would not have been able to continue trading if the books did not balance, and they were in fear of having their branches taken away from them.

    iv) The terms of their contracts were unfair, and there was no motivation for them to raise Horizon problems: if they did so, POL failed to investigate properly and would inevitably hold the SPM responsible for any monies which Horizon showed to be missing.

    v) POL failed to make adequate disclosure to the defence in the criminal proceedings of data on the Horizon system.

56. The CCRC considered that Fraser J's judgments undermined POL's approach to the criminal prosecutions of these appellants, in particular because of his findings which it summarised as follows:

    i) Legacy Horizon was not remotely robust.

    ii) HNG-X, the first iteration of Horizon Online, was slightly more robust than Legacy Horizon, but still had a significant number of bugs, errors and defects.

    iii) There was a significant and material risk of inaccuracy in branch accounts as a result of bugs, errors and defects in Horizon.

    iv) There is a material risk that shortfalls in branch accounts were caused by Horizon during the years when Legacy Horizon and HNG-X were in use (2000-2010, and 2010 onwards).

    v) There was independent evidence which supported the SPMs' version of events, including from Royal Mail's own engineers and from POL's own auditors.

    vi) POL failed to disclose to SPMs the full and accurate position in relation to the reliability of Horizon.

    vii) POL, and also Fujitsu, adopted the default position that SPMs must be responsible for shortfalls. The level of investigation by POL and Fujitsu was poor.

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viii) SPMs were at a significant disadvantage in terms of access to relevant information which might have enabled them to investigate and challenge alleged shortfalls.

ix) SPMs had no way of disputing shortfalls within Horizon.

x) POL routinely overstated the contractual obligation on SPMs to make good losses.

xi) Remote access to branch accounts [i.e., by Fujitsu] was extensive, and some branch accounts were in fact altered without the SPM's knowledge. It would appear in the accounts as though such actions had been carried out by the SPM.

57. The three most important of those points, in the CCRC's view, were:

i) That there were significant problems with the Horizon system and with the accuracy of the branch accounts which it produced. There was a material risk that apparent branch shortfalls were caused by bugs, errors and defects in Horizon.

ii) That POL failed to disclose the full and accurate position regarding the reliability of Horizon.

iii) That the level of investigation by POL into the causes of apparent shortfalls was poor, and that the Post Office applicants were at a significant disadvantage in seeking to undertake their own enquiries into such shortfalls.

58. The CCRC concluded, in respect of each of these appellants, that Fraser J's findings gave rise to two cogent lines of argument in relation to abuse of process. It decided that there was a real possibility that this court would find that it had been an abuse of process to prosecute the appellants. It therefore referred the cases to this court.

59. Although individual appellants formulate their submissions differently, the reasons given by the CCRC give rise in each case to two grounds of appeal:

i) Ground 1: 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;

ii) Ground 2: the evidence, together with Fraser J's findings, shows that it was an affront to the public conscience for the appellants to face prosecution.

Those grounds reflect two possible circumstances in which criminal proceedings may be found to have abused the process of the court. We shall refer to them as "category 1 abuse" and "category 2 abuse". The grounds raise issues as to whether POL properly discharged its duties of investigation and disclosure under the Criminal Procedure and Investigations Act 1996 ("the CPIA"). Before considering the arguments, it is convenient first to set out the relevant legal framework.

The legal framework:

60. Section 3 of the CPIA imposes on a prosecutor a duty to -

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> "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."

61. That duty continues throughout the criminal proceedings, and after conviction. We are primarily concerned with whether POL complied with that duty at and around the time of its prosecutions of these appellants. It is however important to note that in connection with the appeals, solicitors and counsel instructed by POL have undertaken a very extensive exercise in reviewing millions of documents in order to consider, and make, post-conviction disclosure. We place on record that, from all we have seen, that demanding exercise has been carried out diligently and thoroughly in accordance with a clearly-stated Disclosure Management Document. As a result, those now representing the appellants, and consequently this court, have all relevant documentation, including important documents which were not only not disclosed to the appellants at the time of their prosecutions but also not disclosed in the High Court proceedings before Fraser J.

62. Section 23 of the CPIA requires the Secretary of State to prepare a code of practice containing provisions designed to secure, amongst other things –

> "(a) that where a criminal investigation is conducted all reasonable steps are taken for the purposes of the investigation and, in particular, all reasonable lines of inquiry are pursued;
>
> (b) that information which is obtained in the course of a criminal investigation and may be relevant to the investigation is recorded;
>
> (c) that any record of such information is retained;
>
> (d) that any other material which is obtained in the course of a criminal investigation and may be relevant to the investigation is retained …"

Such a code has been published and from time to time revised.

63. Each appellant of course had the right to a fair trial pursuant to article 6 of the European Convention on Human Rights.

64. The burden is on an accused to show, on a balance of probabilities, that he is entitled to a stay of proceedings on grounds of abuse of process. A stay of criminal proceedings is always an exceptional remedy, because "the majority of improprieties in connection with bringing proceedings can be satisfactorily dealt with by the court exercising its power of control over the proceedings" (*R v Togher and others* [2001] 1 Cr App R 33 at [33]). We bear very much in mind the reminder given by this court, in the context of category 1 abuse, in *D Limited v A and others* [2017] EWCA Crim 1172 at [50]:

> "But applications for a stay of this kind cannot be judicially resolved by a process of 'feel' or 'instinct' … . It remains the

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> case that it is an exceptional step to stay a prosecution; and if a stay is to be granted it must be by a proper application of settled principles to the facts."

65. As to those settled principles, we cite a well-known passage in the judgment of Lord Dyson JSC in the Supreme Court in *R v Maxwell* [2010] UKSC 48 at [13]:

> "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' (per Lord Lowry in *R v Horseferry Road Magistrates' Court, Ex p Bennett* [1994] 1 AC 42, 74G) or will 'undermine public confidence in the criminal justice system and bring it into disrepute' (per Lord Steyn in *R v Latif and Shahzad* [1996] 1 WLR 104, 112F)."

66. Category 2 abuse is by its nature rarely found. In *Warren and others v Attorney-General of Jersey* [2011] UKPC 10 at [24] it was said by Lord Dyson JSC that an abuse of the second category requires a discretionary balancing of the particular offence charged and the particular conduct complained of, with relevant considerations including the seriousness of any violation of a defendant's rights and the seriousness of the offence charged. Lord Dyson went on, at [25-26], to emphasise that how the discretion is exercised will depend on the particular circumstances of the case, that rigid classifications are undesirable, and that

> "… the balance must always be struck between the public interest in ensuring that those who are accused of serious crimes should be tried and the competing public interest in ensuring that executive misconduct does not undermine public confidence in the criminal justice system and bring it into disrepute."

67. Lord Thomas CJ, giving the judgment of the court in *R v Norman* [2017] 1 Cr App R 8, explained at [23] that category 2 abuse involves –

> "… a two-stage approach. First it must be determined whether and in what respects the prosecutorial authorities have been guilty of misconduct. Secondly it must be determined whether such misconduct justifies staying the proceedings as an abuse."

It is at the second of those stages the court must evaluate the competing public interests.

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68. In each of these appeals, the appellant relies on failures of investigation and disclosure which, it is argued, would have founded a successful application to stay the prosecution as an abuse if the relevant facts had been known at the time. As it was, prosecutions were pursued on the basis that the data produced by Horizon was accurate and reliable, and the appellants were advised by their legal representatives, and made their decisions as to pleas, in that context. It is therefore important to note that in *R v Mullen* [1999] 2 Cr App R 143 an appeal against conviction was allowed when the court, having summarised the facts, concluded at p157:

> "In these circumstances, we have no doubt that the discretionary balance comes down decisively against the prosecution of this offence. This trial was preceded by an abuse of process which, had it come to light at the time, as it would have done had the prosecution made proper voluntary disclosure, would properly have justified the proceedings then being stayed."

69. Where a defendant has entered an unequivocal and intentional plea of guilty, the resultant conviction will rarely be found to be unsafe. It is nonetheless possible for fresh evidence to be admitted and for an appeal to be allowed in such circumstances: see *R v Jones* [2019] EWCA Crim 1059 at [25]. In *R v Togher and others* it was held that a conviction may be quashed on grounds of abuse of process even when a guilty plea has been entered, though only if "it would be inconsistent with the due administration of justice to allow the pleas of guilty to stand" (see paragraph [33]). In a case in which a defendant who has pleaded guilty appeals against his conviction on grounds of non-disclosure, the court must consider whether the plea was entered in ignorance of evidence going directly to his guilt or innocence. As it was expressed in *R v Togher and others* at [59], the question is whether the guilty plea was "founded upon" the irregularity of non-disclosure. In *R v Early and others* [2002] EWCA Crim 1904 at [18] the court emphasised the crucial importance of a prosecuting authority making full relevant disclosure before trial. It held that a defendant who pleaded guilty at an early stage should not, if adequate disclosure had not been made, be in a worse position than a defendant who, as a consequence of an application to stay the proceedings as an abuse, benefited from further orders for disclosure culminating in the abandonment of proceedings against him.

The appeals to this court:

70. 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 which affected both Legacy Horizon and Horizon Online, 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 ARQ 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

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had the ability to rebuild branch data. All of this could be done by Fujitsu without the knowledge or consent of the SPM.

71. 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 by this court to be unsafe on grounds amounting to category 1 abuse. In such cases, POL did not resist the appeal on Ground 1.

72. POL did not however accept that the same failures of investigation and disclosure were sufficient to justify a finding of category 2 abuse. In relation to the appeals which were not opposed on Ground 1, that concession did not mean that the appellant should not have been prosecuted, or that the prosecution was an affront to the public conscience or (to adopt another phrase used in other cases) an affront to the conscience of the court.

73. POL realistically accepted that there were failures of investigation and disclosure in relation to many of the prosecutions. It effectively divided the appellants into three groups. Given the number of cases before the court, it will be convenient if we too sometimes refer to those three groups. In doing so, we intend no disrespect to individual appellants, and we do not lose sight of the differing circumstances of their respective cases.

74. In group A, there are four appellants in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within both category 1 and category 2. They are Josephine Hamilton, Hughie Thomas, Allison Henderson and Alison Hall. POL contended that in each of those cases there were specific reasons why it was appropriate to make a concession as to Ground 2 as well as to Ground 1.

75. In group B, there are 35 appellants in respect of whom POL accepted that this court may properly find that the prosecutions were an abuse of process within category 1, but resisted the appeals insofar as they are based on category 2 abuse. They are Gail Ward, Julian Wilson (deceased), Jacqueline McDonald, Tracy Felstead, Janet Skinner, Scott Darlington, Seema Misra, Della Robinson, Khayyam Ishaq, David Hedges, Peter Holmes (deceased), Rubina Shaheen, Damien Owen, Mohammed Rasul, Wendy Buffrey, Kashmir Gill, Barry Capon, Vijay Parekh, Lynette Hutchings, Dawn O'Connell (deceased), Carl Page, Lisa Brennan, William Graham, Siobhan Sayer, Tim Burgess, Pauline Thomson, Nicholas Clark, Margery Williams, Tahir Mahmood, Ian Warren, David Yates, Harjinder Butoy, Gillian Howard, David Blakey and Pamela Lock. In relation to the three deceased appellants, orders have been made enabling the appeals to be brought by members of their families.

76. In group C, there are three appellants in respect of whom POL contended that there should be no finding of abuse within either category 1 or category 2. They are Stanley Fell, Wendy Cousins and Neelam Hussain.

77. We shall say more about the cases within each of these groups later in this judgment. At this stage, consistent with what we have just explained, it suffices to note that in all but three of the 42 cases, POL concedes that there were material failures of investigation and disclosure, which meant that 39 of the appellants could not have, and did not have, a fair trial. Whilst it is a matter for the court, POL accepts that in those 39 cases it would be open to the court to find the convictions unsafe on the grounds of an abuse of

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process of the first category. The three exceptions in group C are cases in which POL contends that the reliability of the Horizon data was not essential to the prosecution case. The appellants concerned argue to the contrary, and we shall address their respective cases later. POL accepts that if the court rejects its primary submission, and finds that the reliability of Horizon data was essential to all or any of those three cases, then the same concessions as to category 1 abuse would be made in their cases as in the other 39 cases. Thus the three cases in group C do not involve any departure from POL's concessions as to failures in investigation and disclosure: they are distinguished from the other cases on the basis that they are not "Horizon cases" at all.

78. POL has fairly and properly made clear that it would not seek a retrial of any appellant whose appeal is allowed.

79. Turning briefly to the procedural history of the appeals, we gave initial directions at a hearing on 18 November 2020. At a further hearing on 17 December 2020 we heard submissions from counsel for the parties, and from counsel helpfully instructed by Her Majesty's Attorney General to act as advocate to the court, on the issue of whether an appellant whose appeal was not resisted by POL on Ground 1 was entitled to argue Ground 2. We concluded, for reasons which we later gave in writing[3], that appellants in that position were not entitled as of right to argue Ground 2 if their appeals would in any event succeed on Ground 1, but that in the exercise of the court's discretion we would permit argument on Ground 2 by any appellant who wished to advance it. In the event, each appellant did wish to do so. Written submissions were made, in advance of the hearing of the appeals.

80. We wish to express our thanks to all counsel who appeared before us at the hearing of these appeals, and to those who instructed and assisted them, for the thoroughness of their preparation, and for the realism and fairness with which they narrowed issues and agreed points which were not in dispute, thereby assisting the court to focus on the real issues. We are also grateful for the quality of the written and oral submissions.

Further evidence and information:

81. As a result of its review of the many documents, POL disclosed further material which had not been seen by Fraser J but which this court has been able to consider. It includes what has been referred to for convenience as "the Clarke advice" and other documents which were relied upon in the appellants' submissions before us.

82. The Clarke advice is dated 15 July 2013, but was first disclosed in these proceedings in November 2020. It was written by Simon Clarke, a barrister employed by a firm of solicitors which was instructed by POL in relation to prosecutions. It was written in order to advise POL about the use of expert evidence in cases of alleged crimes by SPMs. Mr Clarke noted that POL generally only prosecuted for three types of offence: theft, false accounting and fraud. He commented that –

> "The detection and successful prosecution of such offences is almost always dependant [sic] upon the proper analysis and presentation of Horizon data and accordingly it is imperative that

[3] [2021] EWCA Crim 21

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> the integrity and operation of the Horizon system is demonstrably robust."

He went on to summarise the nature of defences which either made an express assertion that Horizon had failed in some way, or asserted that Horizon must be at fault because the SPM had acted properly and the alleged shortfall was otherwise inexplicable. He also noted that defendants who had pleaded guilty to false accounting or fraud alleged that they had been covering up inexplicable losses. He added that in all these situations defendants often also complained about a lack of training on Horizon and/or inadequate customer support.

83. Mr Clarke then set out the duties of an expert witness, as required by the Criminal Procedure Rules. He summarised the prosecution's disclosure duties under section 3 of the CPIA.

84. Mr Clarke stated that an employee of Fujitsu, Gareth Jenkins, had provided expert evidence as to the operation and integrity of Horizon. He referred to a number of statements which Mr Jenkins had provided to POL in various cases, attesting to the robustness and integrity of Horizon. Mr Jenkins had ended most of those statements as follows:

> "In summary I would conclude by saying that I fully believe that Horizon will accurately record all data that is submitted to it and correctly account for it."

85. Mr Clarke summarised the statements as Mr Jenkins saying that there was nothing wrong with the system. He continued:

> "Unfortunately that was not the case, certainly between the dates spanned by the statements I have extracted here, the 5th October 2012 and the 3rd April 2013."

Mr Clarke went on to say that Mr Jenkins had been aware of at least two bugs which had affected Horizon Online since September 2010, one of which was still extant and would not be remedied before October 2013, but had failed to say anything about them or about any Horizon issues in his statements. He expressed the firm opinion that if Mr Jenkins had mentioned the existence of the bugs, that would undoubtedly have required to be disclosed to any defendant who raised Horizon issues as part of his or her defence.

86. Mr Clarke advised that Mr Jenkins had failed to comply with the duties of an expert witness and should not be asked to provide expert evidence in any future prosecution. We are aware that there is an issue as to whether Mr Jenkins had been used by POL as an independent expert witness, a role which he could not fulfil for the simple reason that he was an employee of Fujitsu. We do not think it necessary to say anything about that issue, because whilst it may be important in other contexts, it does not affect our consideration of POL's breach of its disclosure obligations. That is because the following conclusions expressed by Mr Clarke are equally applicable whether Mr Jenkins prepared his statements as an independent expert or as an employee of Fujitsu with particular knowledge of Horizon:

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> "- Notwithstanding that the failure is that of [Mr Jenkins] and, arguably, of Fujitsu Services Ltd, being his employer, this failure has a profound effect upon POL and POL prosecutions, not least because by reason of [Mr] Jenkins' failure, material which should have been disclosed to defendants was not disclosed, thereby placing POL in breach of their duty as a prosecutor.
>
> - By reason of that failure to disclose, there are a number of now convicted defendants to whom the existence of bugs should have been disclosed but was not. Those defendants remain entitled to have disclosure of that material notwithstanding their now convicted status. (I have already advised on the need to conduct a review of all POL prosecutions so as to identify those who ought to have had the material disclosed to them. That review is presently underway.)
>
> - Further, there are also a number of current cases where there has been no disclosure where there ought to have been. Here we must disclose the existence of the bugs to those defendants where the test for disclosure is met."

87. Given that SPMs had been complaining about Horizon for well over a decade, we are bound to say that we find it extraordinary that it was necessary for Mr Clarke to advise in those terms. We commend him for expressing himself as clearly and firmly as he did. But it should not have been necessary for him to have to give such basic advice to a prosecuting authority about its duty in respect of disclosure.

88. Mr Clarke wrote a further advice on 2 August 2013. From this it is apparent that, before sending his earlier advice, he had advised POL in conference on 3 July 2013. At that conference he had advised the creation of a single hub to collate all Horizon-related defects, bugs, complaints, queries and Fujitsu remedies, so there would be a single source of information for disclosure purposes in future prosecutions. POL had accepted his advice and had set up a weekly conference call, three of which had taken place by the time Mr Clarke wrote his later advice. After the third, he said, the following information had been relayed to him:

> "(i) The minutes of a previous call had been typed and emailed to a number of persons. An instruction was then given that those emails and minutes should be, and have been, destroyed: the word 'shredded' was conveyed to me.
>
> (ii) Handwritten minutes were not to be typed and should be forwarded to POL Head of Security.
>
> (iii) Advice had been given to POL which I report as relayed to me verbatim: *'If it's not minuted it's not in the public domain and therefore not disclosable.' 'If it's produced it's available for disclosure - if not minuted then technically it's not.'*

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> (iv) Some at POL do not wish to minute the weekly conference calls."

89. Mr Clarke then set out the relevant provisions governing disclosure. He emphasised the seriousness of any attempt to abrogate the duty to record and retain material, observing that a decision to do so may well amount to a conspiracy to pervert the course of justice. He ended with the following:

> "Regardless of the position in civil law, any advice to the effect that, if material is not minuted or otherwise written down, it does not fall to be disclosed is, in the field of criminal law, wrong. It is wrong in law and principle and such a view represents a failing to fully appreciate the duties of fairness and integrity placed upon a prosecutor's shoulders."

90. Again, we commend the firmness and clarity of Mr Clarke's advice. That he should have had to give it is, if anything, even more extraordinary than the fact that he needed to write his earlier advice. The need to give it suggests there was a culture, amongst at least some in positions of responsibility within POL, of seeking to avoid legal obligations when fulfilment of those obligations would be inconvenient and/or costly to POL.

91. The material which we have seen includes other indications of the approach to Horizon issues taken by at least some POL personnel involved in the conduct of these and similar prosecutions. For example, in relation to the prosecution of Seema Misra, an appellant in whose case it is now accepted that there was a failure of disclosure:

i) In an exchange of internal memoranda in August 2009, a defence request for disclosure of Horizon data was met with objections based upon the cost of obtaining such information from Fujitsu. The basis of the objection was that POL's contract with Fujitsu placed limitations upon the number of requests for ARQ data which could be made each year. In short, consideration of the data for disclosure to the defence appears to have been resisted, not on the grounds that it was not required by law, but on the grounds that POL's contractual arrangements with Fujitsu made it costly and inconvenient to comply with its legal obligations as a prosecutor.

ii) On 15 January 2010 a schedule of sensitive material was prepared. The Disclosure Officer who signed it stated that she believed the single item listed on the schedule was sensitive. The item was described as "Article relating to integrity of Horizon system, supplied with accompanying letter by defendant". The reason for sensitivity was said to be "Could be used as mitigation, ie to blame Horizon system for loss". Given that the item appears to have been a document supplied by the defence, the appellant was not in fact deprived of material she should have seen; but the important point for present purposes is that a POL employee acting as Disclosure Officer felt it appropriate to treat a document as sensitive, and withhold it from disclosure, because it could be used to assist the defence. Such an approach to disclosure is plainly wrong, but it does not appear that any action was taken by anyone on behalf of POL to correct the officer's serious error.

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iii) A memorandum dated 22 October 2010 by a senior lawyer in POL's Criminal Law Division reported the successful prosecution of Seema Misra. The memorandum complained that the case had involved "an unprecedented attack on the Horizon system" which, the author said, the prosecution team had been able to "destroy". He ended the memorandum, which was copied to the Press Office, by expressing the hope that "the case will set a marker to dissuade other defendants from jumping on the Horizon bashing bandwagon".

92. Seema Misra had been appointed an SPM in 2005. We note that in a report prepared by Second Sight in April 2015 (in connection with the possibility of mediation), the appellant is recorded as saying:

> "she was surprised to find that discrepancies occurred on each day of her onsite training, particularly as the trainer had watched every transaction she carried out that week. She adds that in the second week, an unexplained shortfall of approximately £200 occurred whilst balancing, and that the trainer rang the Helpline for assistance. She says that the trainer followed the Helpline's instructions, which had the effect of causing the shortfall to double, after which the trainer told her "*we have to make the till good now and you might get an error notice*". She says that this 'doubling' of a loss also occurred on another unspecified occasion in relation to a £2,000 discrepancy. Post Office states that there are no records in the NBSC call logs of the call that the Applicant asserts was made by the trainer and that '*due to the time that has elapsed there are no transaction logs available for the Applicant's training period*'."

We observe that this appears to be a striking instance of a problem with Horizon, of which independent evidence was or should have been available from the person who was training the appellant in its use.

93. We mention two further examples:

i) An attendance note dated 12 July 2010 relating to the appellant Rubina Shaheen contained the following:

> "We don't have a defence case statement which makes some things difficult. However, it would appear that she is using solicitors who have jumped on the Horizon bandwagon.
>
> …
>
> However, it is absolutely vital that we win as a failure could bring the whole of the Royal Mail system down. Counsel's concerns is that juries will still believe in conspiracies and there don't need to be many people on the jury who do believe in conspiracy for us to have a problem."

ii) In a memorandum dated 2 November 2010 in relation to a different prosecution (not involving one of these appellants) a legal executive reported that he had

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asked the defence solicitors if they intended to serve any expert evidence, but had not mentioned Seema Misra's case to them: "They can find that out for themselves".

94. Turning to the submissions, we begin with those which apply to all the appellants in groups A and B, and also to those in group C if POL fails in its principal submission about that group. We will come later to the cases of individual appellants. In view of the concessions made by POL in relation to Ground 1, counsel sensibly concentrated their submissions on Ground 2. We shall summarise the submissions very briefly, but make clear that we have taken them all into account.

The submissions:

95. Mr Moloney QC and Miss O'Raghallaigh, who act for the majority of the appellants, submit that Fraser J's findings, combined with the concessions made by POL in relation to Ground 1 and the further material which has been disclosed, show deliberate conduct by a prosecutor which brings the criminal justice system into disrepute and is of sufficient gravity to constitute category 2 abuse of process. They submit that these are not cases of "simple" non-disclosure: the non-disclosure was caused by apparent institutional reluctance on the part of POL to investigate and disclose anything which would or could compromise the perceived integrity of Horizon. But for POL's conduct of the investigations and prosecutions, the appellants would not have been prosecuted. There was no urgency for these cases to be prosecuted, and nothing mitigates the conduct of POL in prosecuting the appellants whilst failing to investigate obviously relevant matters and failing to make necessary disclosure. No fine balance of competing public interests is necessary in the circumstances of these cases: everything about POL's conduct undermines public confidence in their role as prosecutor, and the public interest in prosecuting serious crime was largely extinguished.

96. As a result of further disclosure a short time before these appeals were heard, Mr Moloney was able to put before the court minutes of meetings of the POL board in 1999-2000, showing a number of technical issues which delayed acceptance and rolling out of the system. He submits that problems were therefore known from the outset, and it cannot be said that POL only later had grounds for doubting the reliability of Horizon. Yet POL chose to disbelieve what SPMs told it about problems with unexplained shortfalls and instead pursued repayment of the supposed debt, and prosecution.

97. Mr Moloney submits that the financial interests of POL underlay both the contractual terms between POL and SPMs, and also POL's approach to these prosecutions. He submits that there was a refusal on the part of POL to countenance the possibility of an error in Horizon unless an SPM could provide a specific date and time for the suggested error. He points to the PEAK of 17 April 2001 to which we have referred[4]. He also draws attention to a disclosed extract from the minutes of a POL Board meeting on 12 January 2012, at which an assurance was sought that there was no substance in challenges to the integrity of Horizon which had been raised in the press. The answer included the following:

[4] See paragraph [36] above

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> "The Business has also won every criminal prosecution in which it has used evidence based on the Horizon system's integrity."

98. Mr Stein QC and Mr Orrett, for the appellants Scott Darlington, Peter Holmes (deceased), Rubina Shaheen, Pamela Lock and Stanley Fell, submit that POL had over a period of years prosecuted its own representatives in such an exceptionally unfair fashion that, after a review by independent counsel, it had to concede that the prosecutions were an abuse of process. Such a situation has never previously arisen, and it is a clear case of the prosecutions being an affront to the public conscience. POL's repeated failures of investigation and disclosure, over many years, are relevant to category 2 abuse as well as to category 1. They submit, consistently with Fraser J's findings, that the approach of POL was to force SPMs to accept apparent financial losses shown on Horizon which they did not accept as being their own fault. They refer to what was said by Coulson LJ, sitting in the Court of Appeal, Civil Division, in giving his reasons for refusing an application by POL for permission to appeal against Fraser J's decisions in his Common Issues judgment: Coulson LJ, having made the observation (with which we respectfully agree) that "No judge will ever know more about this case generally, and the Common Issues specifically, than Fraser J", went on to say this:

> "The PO describes itself as 'the nation's most trusted brand'. Yet this application is founded on the premise that the nation's most trusted brand was not obliged to treat their SPMs with good faith, and instead entitled to treat them in capricious or arbitrary ways which would not be unfamiliar to a mid-Victorian factory owner (the PO's right to terminate contracts arbitrarily, and the SPMs alleged strict liability to the PO for errors made by the PO's own computer system, being just two of many examples). Given the unique relationship that the PO has with its SPMs, that position is a startling starting point for any consideration of these grounds of appeal."

99. Mr Stein submits that POL had in effect set up a system to blame SPMs for losses, so that the default position was that any apparent shortfall had to be paid in full by the SPM. He points to the bewilderment and anxiety of SPMs faced with unexplained shortfalls, who could not understand what was happening and who in some cases suspected the answer must lie in theft by a member of their staff or even by a member of their family. He draws attention to the correspondence in 2009 from two Members of Parliament[5]. He emphasises that Fraser J did not have all the material which is now available to this court, and in particular did not have the Clarke advices. He submits that the Clarke advices show that even as late as 2013, despite all the concerns which had been expressed about Horizon, POL still had no system for ensuring that appropriate disclosure was made when the reliability of Horizon data was a necessary element of criminal charges. He then draws attention to the way POL implemented Mr Clarke's first advice, as indicated in his second advice.

100. Ms Busch QC and Dr Fowles, for the appellants Tracy Felstead, Janet Skinner and Seema Misra, submit that category 2 abuse exists where a prosecutor has behaved in such a way that the court should not make its processes available to assist it. The court

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[5] See paragraph [23] above

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should use its power to stay proceedings in order to prevent abuse of the criminal justice system, rather than to punish prosecutorial misconduct. They submit that when weighing in the balance the public interest in those charged with serious crimes being tried, it is important to bear in mind that – in the light of what is now known – the appellants' guilt is in issue. They too refer to the duties of a prosecutor pursuant to the CPIA and the Code of Practice, including the duty to record and retain all relevant information and material. They point out that each of the appellants for whom they act was prosecuted in reliance on data produced by Legacy Horizon, a system which Fraser J found "was not remotely robust". They helpfully prepared a summary of the bugs errors and defects in Horizon at a given time and the impact on branch accounts.

101. Insofar as the evidence before Fraser J was said to show that POL was not made aware of certain information by Fujitsu, Ms Busch relies on the observation of Fraser J that POL "ought to have known how its own system works". She points out that the interviews under caution of the appellants were conducted by POL as if it was for the SPMs to provide affirmative proof that they had not stolen the money alleged to be missing. They submit that the prosecutions could not have been brought, or at any rate could not have succeeded, if POL had complied with its duties as investigator and prosecutor.

102. Ms Busch suggests that in one respect the Clarke advice of 15 July 2013 may have understated POL's disclosure obligations. She submits that the duty arose in any case where the prosecution turned on the reliability of Horizon data, not only in cases where Horizon issues were specifically raised by a defendant. She points out that many defendants did not know that they could raise Horizon issues. She further submits that whereas category 1 abuse of process is principally concerned with the relationship between prosecutor and defendant, category 2 "directly implicates the courts". She relies on the statement of Rose LJ in *R v Mullen* at p158F that category 2 abuse of process –

> "… arises from the court's need to exercise control over executive involvement in the whole prosecution process, not limited to the trial itself."

103. Ms Busch submits that the court should consider the numerous instances of POL as prosecutor misleading and/or withholding critical information from not just individual defendants but also the courts. She suggests that the systemic failings of POL are summed up by its continuing insistence, "in the face of all the evidence to the contrary", that Horizon was robust. She further submits that the obvious explanation for the shortfalls, in the accounts of SPMs who were all persons of good character selected by POL, was that there were faults in Horizon, not that so many SPMs had suddenly turned to crime.

104. Mr Gordon, on behalf of the late Dawn O'Connell, emphasises the importance of ground 2: it is important that there should be full vindication. He points out that Mrs O'Connell explained in interview that a deficit in the accounts had arisen because of recurring anomalies in the system which she could not explain; but no ARQ data was obtained and there was no investigation of the integrity of the Horizon data. He points out that the appellant herself was severely limited in her ability to challenge the Horizon data, and submits that POL focused on proving how she had falsified the accounts – conduct which she admitted – rather than examining the root cause of the shortfall,

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when she had always denied taking any money and when she had the support of some 30 character witnesses speaking of her honesty and integrity.

105. Mr Saxby QC and Mr Irwin, for the appellant Carl Page, similarly submit that the reliability of Horizon data was essential to the case against him and, in the light of Fraser J's findings, the prosecution should never have been brought. They point out that when the appellant said in cross-examination at his trial that he did not know whether money was missing or there was an accounting problem, it was put to him by prosecution counsel that he knew there was no accounting problem and he was a thief. They emphasise that POL was victim, investigator and prosecutor in respect of the alleged crime, with a financial interest in a successful prosecution. They submit that POL was motivated by a desire to preserve a false confidence in Horizon, even if that might lead to miscarriages of justice, and the reality was only revealed after the High Court litigation which POL fiercely contested.

106. In his oral submissions, Mr Saxby argued that it is plainly an affront to justice for an authority to prosecute when it should not; and no less an affront to justice for it to prosecute when, had it been doing its job properly, it would have known that it should not.

107. Mr Patel QC and Mr Smith for the appellant Vijay Parekh, who pleaded guilty to theft, rely on *R v Togher and others*, and *R v Kelly and Connolly* [2003] EWCA Crim 2957 as showing that a conviction may be quashed on appeal as an abuse of process even when a guilty plea has been entered. They submit that the appellant in interview raised problems about unexplained shortfalls, but there was no investigation into what he had said or into the cause of the shortfalls, and POL failed to make disclosure of problems with Horizon of which it was aware or could have made itself aware. They further submit that POL displayed an institutional obstinacy towards investigation, and a culture of secrecy, irreconcilable with its duties as a prosecutor. The abuse of process went beyond category 1, and brought the criminal justice system into disrepute.

108. Mr Millington QC and Mr Chand, whose submissions primarily relate to POL's contention that the appeal of Neelam Hussain is "not a Horizon case", submit on her behalf that there was a failure of disclosure in her case which should be viewed against the background of a systemic failure by POL, over many years, to discharge its investigative and disclosure obligations. In his oral submissions, Mr Millington said that insofar as POL may have given any thought to its disclosure obligations, the evidence suggests it would have deliberately disregarded them. He submits that the appellant was deprived of the opportunity to explore the question of the reliability of the data, and relies on the decision in *R v Early* to which we have referred[6]. He points out that the public response of POL to the Computer Weekly report in 2009[7] was to assert that Horizon was a robust system.

109. Mr Altman QC, Miss Johnson QC, Mr Baker QC, Miss Carey, Miss Brewer and Miss Jones submit on behalf of POL that abuse of process is a fact-sensitive and time-sensitive exercise, and that a global approach to the appeals collectively would not be appropriate. It does not follow, from the concessions made in relation to Ground 1, that the failures of investigation and disclosure were so bad that a finding of category 2

[6] See paragraph [69] above
[7] See paragraph [23] above

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abuse should also be made: it is necessary to consider, on a case-sensitive basis, whether there is evidence of prosecutorial misconduct so egregious that the appellant concerned should never have been prosecuted. Counsel rely on what was said in *Tague v Governor of HM Prison Full Sutton* [2016] 1 Cr App R 15 at [49], where Sir Brian Leveson PQBD drew a distinction between gross misconduct which the criminal justice system cannot approbate, and conduct which may merely be the result of state incompetence or negligence and would not necessarily justify a "get out of jail free" card. They remind the court that the jurisdiction to stay proceedings is exceptional, with the burden being on the appellants to show that there was the abuse of process for which they contend, and submit that those principles remain important in considering category 2 abuse notwithstanding concessions made in relation to category 1.

110. They further submit that the evidence as to the delay in initial acceptance of Horizon shows that POL took care to wait until the identified issues had been resolved before accepting the system and rolling it out. The fact that there had been those issues does not mean that POL knew or believed there were other issues which continued after roll-out. POL was entitled to rely on Fujitsu's assurances that the identified issues had been resolved. They therefore submit that conduct by POL which might result in an adverse finding in relation to a prosecution in 2010, when awareness of Horizon issues had grown, should not necessarily result in an adverse finding in relation to a prosecution in 2001. They suggest that the CCRC adopted a broad-brush approach to all the cases, which this court should not take. They point out that particular bugs in Horizon, identified at particular times, were resolved by Fujitsu and could not affect later cases. They concede that the past existence of such bugs remained relevant because they should in later prosecutions have been considered for disclosure. But, they ask rhetorically, at what point did it become no longer reasonable to rely upon what Fujitsu was saying about Horizon being robust? They point out that Fraser J in his judgments did not need to consider, and did not consider, who in POL knew precisely what about Horizon, and when. They submit that category 2 abuse does require consideration of the level of knowledge of a prosecutor in a particular case: it is submitted that there is a world of difference, so far as category 2 is concerned, between a prosecutor who was negligent or incompetent, and one who wilfully avoided the duties placed upon him. No large-scale computerised system such as Horizon can be expected to be entirely bug-free, and the principal issues here relate to disclosure.

111. As to the arguments based on a suggested financial motivation of POL's decisions to prosecute, they submit that they are misconceived. They point to what was said in *R (Kombou) v Wood Green Crown Court* [2020] 2 Cr App R 28 at [85] in relation to private prosecutors:

> "There is a crucial distinction between investigators legitimately considering the possibility of confiscation proceedings, and the decision-maker being improperly motivated to decide in favour of prosecution by the prospect of financial gain to the authority."

112. As to the reasons for distinguishing between the three groups of appellants, POL set out in its Respondent's Notice the fact-specific basis for its decision not to resist the Ground 2 appeals of the four appellants in group A. In summary, the reasons why it is conceded that the court might properly find category 2 abuse in those cases, as well as category 1 abuse, are as follows.

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113. Josephine Hamilton was charged with one offence of theft and 14 offences of false accounting. Her case was that she had never stolen any money or acted dishonestly. She pleaded guilty to the false accounting offences and POL agreed not to proceed with the theft charge on the basis that the outstanding shortage (£36,644) was paid by the time of sentence. It was made clear to her that "there must be some recognition that the Defendant had the money short of theft and that a plea on the basis that the loss was due to the computer not working properly will not be accepted."

114. POL concedes the following:

i) It was unacceptable to hold open the threat of the theft charge on this basis.

ii) The investigator had reported there was no evidence of theft.

iii) It was irrational to require Mrs Hamilton to recognise that she had "had the money short of theft" when theft was not to be pursued if the pleas to false accounting were acceptable.

iv) The arrangement lends itself not only to the allegation that the condition of repayment in return for the dropping of theft placed undue pressure on Mrs Hamilton, but also more widely that POL was using the prosecution process to enforce repayment.

v) Moreover, in circumstances where theft was not directly provable and the shortfall may not have been a real loss, seeking to prevent Mrs Hamilton from making any criticism of Horizon as part of her mitigation to the charges she was to plead guilty to was improper.

115. The appellant Hughie Thomas was charged with theft, but a guilty plea to an offence of false accounting was accepted on the basis that he accepted that Horizon was working perfectly. In his case it is conceded that:

i) There was no justification for POL imposing such a condition before accepting Mr Thomas's plea.

ii) POL had dropped the theft charge and so could no longer advance any case that he had stolen the money. That should have left the way open to Mr Thomas to suggest that there was no actual loss and he had only covered up a shortfall Horizon had created.

iii) An attendance note suggests that he was pressured into accepting a positive position on Horizon as a condition of POL dropping the theft charge and accepting a plea to false accounting.

iv) It is arguable that this exerted undue pressure on the appellant to accept that Horizon was "working perfectly" before POL would be prepared to drop theft which had the effect of imposing this agreement on him as a prior condition to dropping theft and taking the plea to the alternative charge.

116. The appellant Allison Henderson pleaded guilty to false accounting and POL offered no evidence on a charge of theft. Before agreement was reached to that effect, POL's

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prosecuting lawyer gave instructions to counsel that a plea to false accounting on the basis that Horizon was at fault would not be acceptable. In her case it is conceded that:

i) It was improper to make the acceptability of her basis of plea conditional on her making no issue of Horizon;

ii) Since the theft charge had been dropped, POL could no longer advance a case that she had stolen any money, and it should have been open to her to suggest that there was no actual loss and she had only covered up a shortfall created by Horizon.

117. The appellant Alison Hall was charged with an offence of fraud and an offence of theft. At a plea and case management hearing she pleaded guilty to the former. The latter charge was ordered to lie on the file. It was made clear to her that POL would not accept any criticism or blame concerning Horizon. In her case it is conceded that:

i) It was improper to make the acceptability of her plea conditional on not making any explicit criticism of Horizon;

ii) In circumstances where theft could not directly be proved, and the shortfall may not have been a real loss, it was wrong to try to prevent her from making any criticism of Horizon as part of her mitigation to the charge she admitted.

118. We shall come later to POL's submissions in relation to the three appellants in group C.

119. POL does not dispute that the appellants are entitled to rely, where relevant, on the clear findings of fact made by Fraser J, and on the disclosed documents, including those which have been disclosed recently. Again, that is a realistic and fair approach by POL, and we have no doubt that it is correct.

The general issues: discussion and conclusions:

120. We can now express our conclusions about the general issues which affect every appellant in whose case the reliability of Horizon data was essential to the prosecution. For convenience, we shall refer to such cases by the shorthand expression "Horizon cases". POL rightly accepts that the prosecutions of all the appellants in groups A and B were "Horizon cases". We will come later to our decisions on the contentious issues as to whether all or any of the appellants in group C were also "Horizon cases".

121. We have no doubt that the concessions made by POL in relation to Ground 1 were rightly and properly made. Those concessions relate to failures of investigation and disclosure in all the "Horizon cases" across a period of 12-13 years. In each of those cases, there was no independent evidence of an actual shortfall, and it was essential to the prosecution case that the Horizon data was reliable. We accept and adopt Fraser J's findings that throughout the relevant period there were significant problems with Horizon, which gave rise to a material risk that an apparent shortfall in the branch accounts did not in fact reflect missing cash or stock, but was caused by one of the bugs, errors or defects in Horizon. POL knew that there were problems with Horizon. POL knew that SPMs around the country had complained of inexplicable discrepancies in the accounts. POL knew that different bugs, defects and errors had been detected well

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beyond anything which might be regarded as a period of initial teething problems. In short, POL knew that there were serious issues about the reliability of Horizon. If POL needed further information, it could have obtained it from Fujitsu. It was POL's 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. Yet 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. On the contrary, it consistently asserted that Horizon was robust and reliable. Nor does it appear that any attempt was made to investigate the assertions of SPMs that there must be a problem with Horizon. The consistent failure of POL to be open and honest about the issues affecting Horizon can in our view only be explained by a strong reluctance to say or do anything which might lead to other SPMs knowing about those issues. Those concerned with prosecutions of SPMs clearly wished to be able to maintain the assertion that Horizon data was accurate, and effectively steamrolled over any SPM who sought to challenge its accuracy.

122. We respectfully accept and adopt the findings of Fraser J as to problems with Horizon being raised by SPMs from 2000 onwards, in relation both to Legacy Horizon and Horizon Online, and in particular his finding[8] 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.

123. These pervasive failures of investigation and disclosure went in each case to the very heart of the prosecution. 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.

124. In considering whether these failures justify a finding of category 1 abuse, we bear in mind that a stay on grounds of abuse is an exceptional remedy. It is on the face of it remarkable that in all the "Horizon cases" the appellants contend that they would have been entitled to that exceptional remedy if POL had made full disclosure at the time, and had nonetheless persisted in pursuing the prosecutions. But these are remarkable appeals, and the fact that similar considerations apply to numerous cases is not in these circumstances a bar to a finding of category 1 abuse.

125. We also bear in mind that many of the appellants pleaded guilty. But as we have already said[9], *R v Togher and others* provides clear authority that a conviction following a guilty plea may be quashed on grounds of abuse of process where the plea was "founded upon" the irregularity of non-disclosure. We have no doubt that all the guilty pleas of

[8] Horizon Issues judgment at [968]: see paragraph [48] above
[9] See paragraph [69] above

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the appellants in "Horizon cases" were founded upon POL's failures of investigation and disclosure. The whole conduct of the prosecutions was based upon the constant assertion that the Horizon data was reliable and that the money must have been stolen, or at least a shortfall dishonestly concealed. The appellants were denied the material which could have been used to question that assertion. They were, moreover, in the very difficult position of being charged with offences of dishonesty committed in breach of their employer's trust. They are likely to have been advised that imprisonment is very often imposed for such offences, and that the mitigation which would be available to them if they pleaded guilty could therefore be of particular importance. Many may well have felt that they had no real alternative but to plead guilty on the most favourable basis which could be agreed with POL.

126. In those circumstances, we are satisfied that a fair trial was not possible in any of the "Horizon cases" and that Ground 1 accordingly succeeds in each of those cases.

127. Turning to Ground 2, we are satisfied that it is not necessary in law for an appellant who raises category 2 abuse to prove misconduct going beyond that which establishes the category 1 abuse. Within the exceptional class of case in which an issue of abuse of process is raised, it will often be abuse in one category only; and where both categories are raised, there may in practice often be a distinction between the matters relied on in each category. It is not possible to generalise. But as a matter of principle we see no reason why the same misconduct cannot provide the basis for a finding of both categories of abuse. We therefore accept the appellants' submission that, depending on the nature and degree of the abusive conduct, the same acts and/or omissions may both render a fair trial impossible (thus, category 1) and make it an affront to the conscience of the court to prosecute at all (and thus, category 2).

128. In considering whether the failures of investigation and disclosure which justify a finding of category 1 abuse are so serious as to justify also a finding of category 2 abuse, the following considerations are relevant.

129. First, we reiterate that 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. It did so despite the fact that POL itself had selected the SPMs as suitable persons to hold their position of trust. In the High Court proceedings, one of the agreed facts was that POL "incurs expense and time-costs in recruiting (including advertising for applicants and assessing and selecting applicants) and training new Subpostmasters". Yet if Horizon showed a shortfall which an SPM did not accept as correct, POL invariably accepted the position shown by Horizon, refused to countenance any possibility that the apparent shortfall may be the result of an error or bug in the system, and was quick to assume dishonesty on the part of the SPM. As we have seen, in internal documents relating to at least some cases, an SPM who attributed a shortfall to a system error was dismissed as "jumping on the Horizon bandwagon". These were very serious failures by POL to fulfil its obligations as a prosecutor. We are driven to the conclusion that throughout the period covered by these prosecutions POL's approach to investigation and disclosure was influenced by what was in the interests of POL, rather than by what the law required.

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130. Secondly, whilst we agree in principle that any issue of abuse of process must be considered in the light of the facts and circumstances relevant to the specific individual case, we are faced in these appeals with clear evidence of systemic failures by POL over many years. Given that the same failures occurred in case after case, year after year, we think that later events shed legitimate light on the approach of POL to earlier prosecutions. We note that even the four cases in group A cover a period of 5 years, with the appellants being convicted between 2006 and 2011. We also note that no document has been shown to us in which any POL employee or official made any adverse comment upon the incorrect approach demonstrated in the documents to which Fraser J, and we, have referred. Nor have we seen any contemporaneous document criticising the misconduct which has caused POL to make concessions as to Ground 2 in relation to the four appellants in group A. We see powerful force in the points that as late as summer 2013 it was still necessary for Mr Clarke to spell out basic principles, and that the response to his advice of at least some personnel was to suggest that information should not be recorded, in the hope that it would therefore not be disclosable. We think it clear that throughout the relevant period, POL as prosecutor demonstrated, as Fraser J found in the Horizon Issues judgment at [928], "a simple institutional obstinacy or refusal to consider any possible alternatives to their view of Horizon, which was maintained regardless of the weight of factual evidence to the contrary". Moreover, the longer that approach persisted, the more POL was able to, and did, rely upon its own past abusive conduct by asserting that no previous challenge to Horizon had succeeded.

131. In those circumstances, we are unable to accept POL's submission that in relation to Ground 2 there may be a distinction to be drawn in POL's favour between the seriousness of its conduct at an earlier time, and the seriousness of its conduct at a later time. POL knew that there were problems with Horizon which delayed its rollout. It knew, as Fraser J found, that SPMs were reporting unexplained discrepancies and shortfalls from 2000 onwards. The persistence of those reports made it impossible to assume that all the initial problems, and any subsequent teething problems, had been resolved. It was able to obtain all relevant information from Fujitsu if it wanted to, and the fact that its own contractual arrangements meant that it would have to incur expense in doing so could not possibly justify its repeated failures to comply with its legal duties. Moreover, to borrow Fraser J's phrase (the Horizon Issues judgment at [1018]), POL "ought to have known how its own system works".

132. Thirdly, POL as prosecutor knew that the consequences of conviction for an SPM would be, and were, severe. Later in this judgment we will mention individual cases, but it is important here to state that many of these appellants went to prison; those that did not suffered other penalties imposed by the courts; all would have experienced the anxiety associated with what they went through; all suffered financial losses, in some cases resulting in bankruptcy; some suffered breakdowns in family relationships; some were unable to find or retain work as a result of their convictions – causing further financial and emotional burdens; some suffered breakdowns in health; all suffered the shame and humiliation of being reduced from a respected local figure to a convicted criminal; and three – all "Horizon cases" – have gone to their graves carrying that burden. Inevitably, the families of the SPMs have also suffered. In each of the "Horizon cases" it is now rightly conceded that those human costs and consequences were suffered after the denial by POL of a fair trial. We unhesitatingly accept and

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endorse Mr Moloney's submission that these were far more than cases of "simple" non-disclosure.

133. Fourthly, and most importantly in the context of category 2 abuse, POL's failings of investigation and disclosure (in Ms Busch's phrase) "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. No judge would have been placed in the unhappy position of learning – as some judges (or retired judges) will do if they read this judgment – that they unwittingly sentenced a person who had been prevented by the prosecutor from having a fair trial.

134. It is not necessary for us to decide whether any POL or Fujitsu witness deliberately lied in a witness statement or oral testimony, or was "economical with the truth". The telling of a lie would of course provide an additional reason for concluding that the process of the court was abused, but it is not a necessary requirement for such a conclusion.

135. Lastly, in relation to the balancing exercise which issues of category 2 abuse require, we accept the appellants' submissions that 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. The charges were serious, but in all the "Horizon cases" the foundation of the charges – namely, that there was an actual shortfall – would have been in issue if the full picture had been known. There was no reason why a prosecution had to be hurried through as a matter of urgency, and no excuse for POL's failure to fulfil its duties. Moreover, whilst it is not necessary for an accused who relies on category 2 abuse to prove that the prosecutor acted in bad faith, we are troubled by contemporaneous internal documents in which POL expressed concern that disclosure in one case of problems with Horizon could have an impact on other cases. Public confidence in the criminal justice system would be severely damaged if a prosecuting authority were permitted to give priority to such a consideration over compliance with its duties as a prosecutor.

136. We are not persuaded by submissions that POL had an improper financial motivation for pursuing prosecutions with a view to obtaining confiscation or compensation orders. We are in no position to make, and it is not necessary for us to make, any finding as to whether any individual involved in any of the prosecutions genuinely believed that Horizon was entirely robust and could safely be relied on in every case, or entertained doubts as to its reliability which were suppressed through fear that any breach of Horizon's claimed impregnability would create serious difficulties in many other cases. Whatever an individual's state of mind in that regard, it was POL which brought and conducted the prosecution; and there can be no doubt that POL as a corporate prosecutor was under a duty to investigate the claims of SPMs that there were problems with Horizon, and to consider and make appropriate disclosure of such problems.

137. In those circumstances, the failures of investigation and disclosure were in our judgment so egregious as to make the prosecution of any of the "Horizon cases" an affront to the conscience of the court. 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

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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.

138. Ground 2 therefore succeeds in each of the "Horizon cases".

139. We turn to the individual appeals, dealing first with the appellants in groups A and B and then with those in group C. We do so comparatively briefly, but we emphasise that we have taken into account all that we have read about each.

Appellants in group A – appeals unopposed on both Ground 1 and Ground 2:

140. For the sake of convenience in this long judgment, we repeat POL's concessions that:

i) each of the group A cases was a "Horizon case"; and

ii) this court may properly find that the prosecution of these cases was an abuse of process within both category 1 and category 2.

141. As set out above, we have accepted POL's concessions. In our judgment, the prosecution of each of the group A appellants was unfair (category 1 abuse) and an affront to justice (which we will use in our consideration of the individual group A and B appeals as a shorthand for category 2 abuse). In each of the group A cases, our general conclusions apply. We add the following details.

Josephine Hamilton

142. On 19 November 2007, in the Crown Court at Winchester before HHJ Barnett, Josephine Hamilton pleaded guilty to 14 counts of false accounting. The prosecution case was that she had made false entries on Horizon, making claims about the presence of cash on hand which were untrue. The prosecution agreed not to proceed with a charge of theft (which was ordered to lie on the file) on the basis that the outstanding shortage of £36,644.89 was to be paid by the time of sentence. On 4 February 2008, Mrs Hamilton received a community sentence order for 12 months with a 12-month supervision requirement. She was ordered to pay £1,000 towards the prosecution costs.

143. Mrs Hamilton's case was that she had not stolen any money or acted dishonestly. In a prepared statement to the criminal investigation, she described a number of inadequacies in Horizon which she had encountered. Between 23 October 2003 and 9 June 2006, she had made 26 calls to the Horizon Helpdesk. Between 3 December 2003 and 5 January 2006, she had made numerous calls to POL's National Business Support Centre Helpline.

144. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Hamilton's case. The ARQ data had been collected on a disc but the exhibits list shows it was "not copied", so that it is not clear whether the ARQ data was served. There was no examination of that data for bugs, errors or defects and no examination for evidence of theft. The unfiltered ARQ data is no longer available but

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it appears that there was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

145. These factors are sufficient for the court to quash Mrs Hamilton's convictions on both Grounds 1 and 2. We were however presented with further information which bolsters our conclusion that her prosecution should not have been brought and which forms the basis of POL's concession under Ground 2. The POL investigator had reported that there was no evidence of theft. Despite this, a POL internal log entry for 22 November 2007 records that Mrs Hamilton's pleas were accepted on the understanding that unless she repaid the shortfall by the date for sentence, POL would proceed with the theft charge.

146. According to the log, it was made clear to the defence that:

> "there must be some recognition that the Defendant had the money short of theft and that a plea on the basis that the loss was due to the computer not working properly will not be accepted."

147. POL concedes that it was unacceptable to hold open the threat of the theft charge unless Mrs Hamilton agreed to forego any criticism of Horizon. We regard this as even more alarming in circumstances in which POL's own investigator had reported there was no evidence of theft. It was irrational and unjust to require Mrs Hamilton to recognise that she had "had the money short of theft" when theft was not to be pursued if the pleas to false accounting were acceptable. POL's conduct gives a firm impression that the condition of repayment in return for POL dropping the theft charge placed undue pressure on Mrs Hamilton. It gives the impression that POL was using the prosecution process to enforce repayment.

148. In our judgment, these additional factors are in themselves bound to bring the justice system into disrepute, providing further strong reasons to allow the appeal under Ground 2. We conclude that, notwithstanding her guilty pleas, Mrs Hamilton's convictions are unsafe. Her prosecution was unfair and an affront to justice. We allow her appeal on Ground 1 and on Ground 2. We quash her convictions on all 14 counts.

Hughie Thomas

149. Hughie Thomas worked as a postman between 1965 and 1992. He became an SPM in 1994. On 29 September 2006, in the Crown Court at Caernarfon, he pleaded guilty to one count of false accounting. From the incomplete case documents that remain, it appears that a charge of theft, relating to an alleged shortfall of £48,450.87, was dropped. Mr Thomas' written basis of plea stated that no blame was attached to Horizon and that he accepted there was a shortage which he was contractually obliged to make good, but he did not know how it had come about. On 6 November 2006, he was sentenced to 9 months' imprisonment. Although the documentation no longer exists, Mr Thomas recalls that he was ordered to pay £9,000 to POL. As a result of the proceedings against him, he was forced to file for bankruptcy.

150. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Thomas' case. Mr Thomas had stated that he was having problems with Horizon. In particular his online banking reports showed several transactions with a nil amount. These were occasions when he had paid money to a customer, but the

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system did not record the value of that transaction. This led to losses and so he altered the cash on hand figures in order to balance the accounts. In his interview under caution, Mr Thomas said that the alleged loss was due to mistakes on Horizon and that he did not understand the system. He had made 13 calls to the Horizon Helpdesk.

151. Although some ARQ data was obtained, it was a dip sample and it was only checked for evidence of zero transactions. The data was not checked for bugs, errors or defects or for evidence of theft. The prosecution produced a witness statement from Mr Jenkins explaining the Horizon system and producing some ARQ data. Mr Jenkins produced three schedules from this data to explain that the zero transactions were normal occurrences. Andrew Dunks of Fujitsu made a statement in which he said that between 1 November 2004 and 30 November 2005, Mr Thomas made 13 calls to the Horizon Helpdesk but that – in Mr Dunks' opinion – none of the calls related to faults which would affect the integrity of Horizon. Other material from Horizon was collated and put into schedules but it appears there was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

152. These factors are sufficient for the court to quash Mr Thomas' conviction on both Grounds 1 and 2. We were however presented with further information which bolsters our conclusion that Mr Thomas' prosecution should not have been brought and which forms the basis of POL's concession under Ground 2. An attendance note, written by a POL prosecution lawyer on the case, recorded a conversation with an external solicitor. The note is dated 25 September 2006, four days before Mr Thomas entered his plea at the Crown Court on the basis that Horizon was not to blame for the shortage. It records:

> "We discussed whether he would plead to false accounting. I mentioned instructions that we would proceed with false accounting providing the Defendant accepts that the Horizon system was working perfectly… Further instructions are that the money should be repaid. Ann could inform Jack that some agreement should be reached taking into account the above instructions."

153. As POL accepts, there was no justification for imposing such a condition before accepting Mr Thomas' plea. POL had dropped the theft charge and so could no longer advance any case that he had stolen the money. As POL accepts, that should have left the way open to Mr Thomas to suggest that there was no actual loss and that he had only covered up a shortfall that Horizon had created.

154. As POL accepts, the attendance note suggests that Mr Thomas was pressured into accepting a positive position on Horizon as a condition of POL dropping the theft charge and accepting a plea to false accounting.

155. In our judgment, these additional factors are in themselves bound to bring the justice system into disrepute, providing further strong reasons to allow the appeal under Ground 2. We conclude that, notwithstanding his guilty plea, Mr Thomas' 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.

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Allison Henderson

156. On 15 December 2010, in the Crown Court at Norwich, Allison Henderson pleaded guilty to one count of false accounting. No evidence was offered on a count of theft to which a "not guilty" verdict was recorded. On the same day, she received a community sentence order with 200 hours of unpaid work. She was ordered to pay £1,400 towards the prosecution costs.

157. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Henderson's case. The prosecution was based on a shortfall of £11,957.78 following a branch audit. In an unsigned defence statement, served on 5 November 2010, Mrs Henderson stated that she could not offer an explanation for any discrepancy. She denied theft but accepted that she was contractually obliged to make good any discrepancies and was making efforts to do so. In an amended, signed defence statement, served on 16 November 2010, Mrs Henderson said that it was her belief that any discrepancy:

> "was as a result of a malfunction of the Horizon computerised accounting system … any discrepancy could have been discovered by the Post Office auditor, particularly as he initially alleged £18,000 was missing, this was reduced to the alleged sum in a matter of minutes. Further investigation by the auditor would have discovered the whereabouts of the alleged missing sum."

158. POL accepts that there is nothing to suggest that any ARQ data was obtained. There was no evidence to corroborate the Horizon evidence. There was no investigation of the substance of the amended defence statement to the effect that Mrs Henderson did not accept the loss. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

159. These factors are sufficient for the court to quash Mrs Henderson's conviction on both Grounds 1 and 2. We were however presented with further information which bolsters our conclusion that the prosecution should not have been brought and which forms the basis of POL's concession under Ground 2. The investigation into Mrs Henderson's case began in March 2010. At the end of September 2010, Rob Wilson, POL prosecuting lawyer, wrote to an investigator, enquiring about Horizon documentation, saying:

> "The current charge covers a period from 1 January 1997 to 10 February 2010. Is there any indication from the Horizon documentation, the defendant's bank statements or any other material when this money first went missing? Can you confirm when the last audit took place so that if necessary that date can actually appear in the indictment? At the moment I suspect that this will be a case where Horizon itself is challenged and, as such, the Prosecution will be under pressure to disclose a huge amount of Horizon data. It would therefore be extremely useful if we could identify something that assists the prosecution in the pursuit of this criminal allegation."

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160. On 17 November 2010, Mr Wilson responded to an email from prosecuting counsel advising him of the possibility that Mrs Henderson might plead guilty to false accounting. Mr Wilson noted:

> "Clearly if there were to be a plea to false accounting but on the basis that the Horizon system was at fault then that would not be an acceptable basis of plea for the prosecution."

161. In similar fashion, POL correspondence of 25 November 2010 refers to a conversation between prosecuting and defence counsel in which it was reported that defence counsel had confirmed that Mrs Henderson would be entering a guilty plea "on the basis that the money has gone missing, but the Defendant did not steal it and there will be no issue relating to Horizon".

162. POL concedes that it was improper to make the acceptability of Mrs Henderson's basis of plea to false accounting conditional on making no issue of the Horizon system. In our judgment, such conduct on the part of a prosecutor is improper. POL had dropped the theft charge and so could no longer advance any case that she had stolen the money. POL concedes that that should have left the way open to Mrs Henderson to suggest that there was no actual loss and she had only covered up a shortfall Horizon had created.

163. In our judgment, these additional factors are in themselves bound to bring the justice system into disrepute, providing further strong reasons to allow the appeal under Ground 2. We conclude that, notwithstanding her guilty plea, Mrs Henderson's conviction is unsafe. Her prosecution was unfair and an affront to justice. We allow the appeal on Ground 1 and on Ground 2. We quash her conviction.

Alison Hall

164. On 30 June 2011, in the Crown Court at Leeds, Alison Hall pleaded guilty to one count of fraud. A further count of theft was ordered to lie on the file. On the same day, she received a community sentence order with 120 hours of unpaid work. A confiscation order under the Proceeds of Crime Act 2002 was made in the sum of £14,842.37. Mrs Hall was ordered to pay £1,000 towards the prosecution costs.

165. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Hall's case. The prosecution was based on a shortfall of £14,842.37 following a branch audit. In her interview under caution, Mrs Hall said that she wanted matters investigated "because the Horizon system is not 100%". She said "she [had] also been out before, has taken money out then put it back in".

166. It appears as if some ARQ data was obtained but it is not clear whether it was ever disclosed. It appears there was no evidence to corroborate the Horizon evidence. There was no investigation into Horizon integrity. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

167. These factors are sufficient for the court to quash Mrs Hall's conviction on both Grounds 1 and 2. We were however presented with further information which bolsters our conclusion that Mrs Hall's prosecution should not have been brought and which forms the basis of POL's concession under Ground 2. On 30 June 2011, POL's external solicitor wrote to Rob Wilson recording what had taken place in court that day,

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including the basis on which Mrs Hall had pleaded guilty to fraud as an alternative to theft. Despite the fact that Mrs Hall had not sought to make any express criticism of Horizon in her defence, the attendance note records the fact it was made clear that:

> "the Prosecution would not accept any criticism or blame concerning the Horizon System."

POL accepts that it was improper to make the acceptability of Mrs Hall's basis of plea to fraud conditional on not making any criticism of the Horizon system.

168. In our judgment, such conduct on the part of a prosecutor is bound to bring the justice system into disrepute. Notwithstanding her guilty plea, Mrs Hall's conviction is unsafe. Her prosecution was unfair and an affront to justice. We allow the appeal on Ground 1 and on Ground 2. We quash her conviction.

Appellants in group B – appeals unopposed on Ground 1 but opposed on Ground 2

169. For the sake of convenience, we reiterate the POL concessions that:

i) each of the group B cases was a "Horizon case"; and

ii) this court may properly find that the prosecution of these cases was an abuse of process within category 1.

170. As set out above, we have accepted those concessions. In our judgment, the prosecution of each of the group B appellants was a category 1 abuse and unfair. We also consider that the prosecution of each appellant was a category 2 abuse as being an affront to justice. In each of the group B cases, the factors which underpin POL's concession on category 1 are sufficiently egregious to establish category 2 abuse. Our general conclusions on POL's category 2 misconduct – which we have set out above and which we do not propose to repeat – apply to the facts of each case. We add the following details.

Gail Ward

171. On 7 September 2007, in the Crown Court at Bristol before Recorder Miskin, Gail Ward pleaded guilty to four counts of false accounting. The prosecution offered no evidence on one charge of attempted theft. Mrs Ward repaid the alleged £12,030.70 shortage after her interview under caution. As a result of the proceedings against her, Mrs Ward was forced to file for bankruptcy.

172. Mrs Ward's case was that she had experienced losses which she repaid when she could but, as the losses got larger, she had inflated the cash on hand figure over a period of 13 months. In summary, she accepted false accounting but denied she had acted dishonestly. Between 11 June 2002 and 11 January 2007, she had made a number of calls to the National Business Support Centre including 10 calls about Horizon. In her termination of contract interview she had stated that Horizon needed to be examined and that she was "100% convinced the money disappeared and wanted an explanation why". POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Ward's case.

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173. Based on the papers available from the criminal proceedings, there is nothing to suggest any ARQ data was obtained. There was no evidence to corroborate the Horizon evidence. Neither the general problems of unexplained shortfalls raised in Mrs Ward's interview under caution nor the specific problems with Horizon that she raised in her termination interview were ever investigated. Mrs Ward had informed POL that her assistant would testify that they had experienced problems but this was not investigated. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

174. POL concedes only that Mrs Ward's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on all four counts.

Julian Wilson (deceased)

175. The appeal of Julian Wilson is brought posthumously by his widow Mrs Karen Wilson. On 15 June 2009, in the Crown Court at Worcester, Mr Wilson pleaded guilty to two counts of fraud. It appears that three counts of false accounting did not proceed. On 3 August 2009, he received a community sentence order with 200 hours of unpaid work. He was ordered to pay prosecution costs in the sum of £3,500.

176. In his interview under caution, Mr Wilson said that he had raised problems with Horizon with his line manager and was told "there was nothing wrong with the system". In his resignation letter to his contract manager, he stated that he had raised the problem of misbalances on three occasions and received no adequate response. In an agreed basis of plea, Mr Wilson stated that the losses occurred because of "staff or systemic errors" and not because the money had been stolen. He admitted inflating the cash on hand figures over five years to ensure that the accounts balanced but believed that the alleged shortfall – £28,551.98 – was due to problems with Horizon.

177. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Wilson's case. Based on the papers available from the criminal proceedings, there is nothing to suggest any ARQ data was obtained. POL did not investigate any of the criticisms of Horizon made by Mr Wilson historically and during his detailed interview. There was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

178. POL concedes only that Mr Wilson's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on both counts. We repeat the condolences that we expressed at the hearing to Mrs Wilson.

Jacqueline McDonald

179. On 8 November 2010, in the Crown Court at Preston, Jacqueline McDonald pleaded guilty to theft. She had pleaded guilty on 5 July 2010 to six counts of false accounting. On 21 January 2011, she was sentenced to a total term of imprisonment of 18 months.

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A confiscation order was made in the sum of £99,759.60. As a result of the proceedings against her, Mrs McDonald was forced to file for bankruptcy.

180. An audit at Mrs McDonald's post office on 1 October 2008 had revealed a total shortage of £94,380.69. In interview Mrs McDonald said that she had experienced problems with Horizon and, when she contacted the Helpline, she received no assistance. She denied theft but accepted she had unintentionally made false accounts.

181. Mrs McDonald's defence statement made reference to problems experienced with Horizon. The defence made a number of disclosure requests but the prosecution made no disclosure in respect of any Horizon reliability difficulties. Mrs McDonald had made 216 calls to the National Business Support Centre about transaction and balancing problems. The pre-sentence report recorded her as saying that she had not stolen the money but admitted to accepting the system balances as correct in order to roll over into the next trading period.

182. POL draws attention to the CCRC's observations about Mrs McDonald's case. The CCRC paid close attention to the significant prosecution evidence against her and to the admission represented by her plea of guilty to theft, thereby accepting that she had stolen the monies in question. We have taken these factors into account, together with the CCRC's assessment that this is a finely balanced case. Nevertheless, as POL concedes, this was a "Horizon case". The prosecution case was dependent on data generated by Horizon and yet there is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. Issues raised by Mrs McDonald were not investigated. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

183. POL concedes only that Mrs McDonald's prosecution was unfair (Ground 1) but we conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on all seven counts.

Tracy Felstead

184. On 26 April 2002, following a trial in the Crown Court at Kingston upon Thames before HHJ Thomas and a jury, Tracy Felstead was convicted of the theft of £11,503.28 and two counts of false accounting. On 20 June 2002, she was sentenced to six months' imprisonment in a young offender institution, aged just 19 years old.

185. In her interview under caution by two of POL's investigators at Peckham Police Station, she was asked: "can you demonstrate how you did not steal the money?" She was asked whether she could satisfy the officers that she did not have "any responsibility for the missing eleven thousand". We note that these questions in essence asked Ms Felstead to prove that she did not commit a crime.

186. Ms Felstead was asked whether her family had driven her to steal, with a request to put aside family loyalty. Although nothing turns on it, we regard the suggestion that family members may have been involved in criminality as a fishing exercise.

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187. In circumstances in which Ms Felstead denied theft, POL accepts that this might have been an unexplained shortfall case and that the reliability of Horizon data might have been essential to her defence.

188. There is no contemporary material to identify what the detail of the defence case was but there is nothing to suggest any ARQ data was obtained at the time of the criminal proceedings. There is no evidence of any investigation into the root cause of the shortfall. POL is prepared to accept that there was no proof of an actual loss as opposed to a Horizon-generated shortage.

189. POL concedes only that Ms Felstead's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. We quash her convictions on all three counts.

Janet Skinner

190. On 5 January 2007, in the Crown Court at Kingston upon Hull before HHJ Thorn, Janet Skinner pleaded guilty to one count of false accounting. A further count of theft was ordered to lie on the file. We understand that the alleged shortfall was £59,175.39. On 2 February 2007, she was sentenced by HHJ Barber to nine months' imprisonment. On 29 August 2007, she was ordered to pay a confiscation order in the sum of £11,000 and to pay compensation to POL in the same amount, out of the proceeds of the confiscation order.

191. During a POL audit, Mrs Skinner had volunteered that there would be a £40,000 shortage of cash. In her interview under caution, she stated that the losses had begun in January 2006. She said that she did not declare them as she could not afford "to put it right". She believed that one of her members of staff had stolen the money, a belief in part predicated on the belief that such a large amount of money "just doesn't go missing". The prosecution relied on the evidence of three of the four other members of staff but we are not persuaded that their evidence was capable of materially advancing the prosecution case. Between 1 January 2004 and 31 January 2005, Mrs Skinner made 116 calls to the National Business Support Centre. Some of those calls concerned Horizon faults and balancing.

192. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Skinner's case. Although there is reference to a "Horizon data disk" in the exhibits, it is not now known what it contained or whether it was disclosed to the defence. It appears there was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage. There was no investigation into the various Helpline calls made by Mrs Skinner. We are struck by the fact that POL failed to take these steps despite Mrs Skinner's long service to POL and her professional progress (doubtless reflecting her trustworthiness) from counter clerk to permanent SPM of North Bransholme Post Office.

193. POL concedes only that Mrs Skinner's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her

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appeal both on Ground 1 and on Ground 2. Her conviction is unsafe. Notwithstanding her guilty plea, we quash her conviction.

Scott Darlington

194. On 1 February 2010, in the Crown Court at Chester before HHJ Elgan Edwards, Scott Darlington pleaded guilty to five counts of false accounting. On 23 February 2010, he was sentenced by HHJ Dutton to a total of three months' imprisonment suspended for 12 months, with a requirement to carry out 120 hours of unpaid work. His conviction was reported in the local press, with consequent damage to his reputation, which we understand to have caused him great distress. Of the alleged £44,508.46 shortfall, he paid £9,000 from his own wages.

195. During an audit by POL, Mr Darlington admitted that he had for a period been inflating cash figures in order that they matched Horizon figures. He thought that the problem was due to employee error and was expecting a transaction correction. He was interviewed under caution and reiterated his account. He had contacted the Helpline about one matter but was too scared to ask for help. He denied stealing any money.

196. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Darlington's case. Based on the papers available from the criminal proceedings, there is nothing to suggest any ARQ data was obtained. There was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. There was no investigation into any calls made, or not, by Mr Darlington to the Helpdesk. There was no proof of an actual loss as opposed to a Horizon-generated shortfall (as found by the judge at the sentence hearing).

197. POL concedes only that Mr Darlington's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on all five counts.

Seema Misra

198. On 21 October 2010, following a trial in the Crown Court at Guildford before HHJ Stewart and a jury, Seema Misra was convicted of the theft of £74,609.84. She had previously pleaded guilty at a plea and case management hearing on 20 March 2009 to six counts of false accounting. On 11 November 2010, she was sentenced to 15 months' imprisonment for the theft and six months' imprisonment concurrently on each count of false accounting. On 8 July 2011, a confiscation order was made in the sum of £40,000. She was ordered to pay compensation of £40,000 to POL, to be paid out of the amount recovered by the confiscation order.

199. An audit at her branch on 14 January 2008 led to the accusation that she was responsible for a shortfall of £74,609.84. In interview under caution, she said there were losses of £89,000-£90,000 due to staff thefts. She admitted that she had falsified the figures for cash on hand and currency awaiting collection in the branch trading statements for two branch trading periods, adding that she was afraid she would lose her job if she revealed the true figures.

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200. A defence statement of 20 March 2009 denied theft and asserted staff thefts had been responsible for the losses. Mrs Misra indicated she was guilty of false accounting. Her first trial in May 2009 for theft was aborted at the start, when she raised issues of Horizon reliability and suggested that errors in the system accounted for some of the losses, albeit she continued to assert there had been staff thefts.

201. Numerous disclosure requests followed including about Horizon. A second defence statement stated: "The general defence is … there have been unquantifiable thefts by former employees causing loss, but this has been compounded by operational faults in the Horizon computer system".

202. The defence served expert evidence from Professor Charles McLachlan regarding Horizon. Six reports were served in total. One of the issues raised was whether a Horizon problem that had afflicted the Callendar Square branch in Falkirk could have been the cause of the losses at Mrs Misra's West Byfleet branch. In addition, Professor McLachlan advanced a series of hypotheses including whether the user interface gave rise to incorrect data entry, and whether the system failed to process transactions properly.

203. The prosecution served evidence in response from Gareth Jenkins. He ruled out the Callendar Square bug as being the cause of the losses. He rejected most of Professor McLachlan's hypotheses. He did concede that he could not exclude the possibility of errors in the system, although he said that that could not be the cause of the volume of the losses in question.

204. There was an application to stay the indictment for abuse of process on grounds of non-disclosure in March 2010, but it failed. The trial recommenced on 11 October 2010. At the outset, the defence made a further application to stay the proceedings for abuse of process on grounds of non-disclosure, particularly as regards the Callendar Square bug issue. The application was refused, and the trial continued. The application to stay was renewed at the close of the prosecution case but was again refused.

205. Mr Jenkins and Professor McLachlan gave evidence to the jury. During her own evidence, Mrs Misra maintained there had been staff thefts but also that there had been unexplained losses that had continued after the staff in question had been dismissed, which she had reported to the Helpline. She stated that she had borrowed money from friends and family to put into POL's funds. Mrs Misra's sister-in-law gave evidence that she had lent her £22,000 for that purpose.

206. Before Mrs Misra's trial, POL and Fujitsu had met to discuss the RPM bug in Horizon Online. Although it was only a matter of days before her trial that discussions about the issue had taken place – and a report by Mr Jenkins proposing a fix had been written – there is no information to suggest that the RPM bug was considered for disclosure, and it was not disclosed to the defence. The bug only appeared in Horizon Online in 2010 and did not have an impact on Legacy Horizon, which was the version of the system in issue in Mrs Misra's trial. Nevertheless, POL has properly conceded that it ought to have been considered for disclosure – and indeed disclosed – in Mrs Misra's trial where issues of Horizon reliability were involved.

207. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Misra's case. It is conceded that the fact that Mr Jenkins gave

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evidence means that POL did not disclose the "full and accurate position regarding the reliability of Horizon." The ARQ data was disclosed to the defence but it was not the unfiltered ARQ data and did not cover the whole of the indictment period. There was no examination of that data for bugs, errors or defects or for evidence of theft. It appears there was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

208. We have earlier in this judgment mentioned other alarming factors relating to Mrs Misra's prosecution and do not repeat them here.

209. POL concedes only that Mrs Misra's prosecution was unfair (Ground 1) but we are bound to conclude that her prosecution was in addition an affront to justice (Ground 2). Given all these circumstances, including but not limited to the fact that Mr Jenkins gave sworn evidence to the jury, we regard this as a compelling case of the sort of prosecutorial misconduct that undermines public confidence in the criminal justice system and brings it into disrepute. We have no hesitation in allowing her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas to the counts of false accounting, we quash her convictions on those counts and on the count of theft.

Della Robinson

210. On 12 December 2012, in the Crown Court at Manchester Minshull Street before HHJ Lowcock, Della Robinson pleaded guilty to one count of false accounting on the day of trial. We understand that the alleged shortfall was £17,587.86. On 18 January 2013, HHJ Lever imposed a community sentence order with 180 hours of unpaid work.

211. In her interview under caution, Mrs Robinson said that the losses had started about two years before. She stated that she and her partner initially made good the losses from their own funds but, as the losses accumulated, this became unsustainable. From around August or September 2010, she instead declared the amounts on the mutilated (i.e. unusable) cash line of the accounts. In her defence statement she said that any errors or deficiencies were as a result of her difficulties in using Horizon.

212. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Robinson's case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

213. POL concedes only that Mrs Robinson's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her conviction is unsafe. Notwithstanding her guilty plea, we quash her conviction.

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Khayyam Ishaq

214. On 7 March 2013, in the Crown Court at Bradford before HHJ Potter, Khayyam Ishaq changed his plea to guilty to the theft of £17,863. On 22 April 2013, he was sentenced to 54 weeks' imprisonment.

215. The defence challenge to the Horizon system was clear from a very early stage in the proceedings. Mr Ishaq's solicitor had informed POL of the issue and of the defence intention to instruct an expert at an earlier Magistrates' Court hearing on 25 July 2012. A defence statement of 29 August 2012 repeated the defence challenge to Horizon and made a series of disclosure requests targeted at the Horizon system.

216. Mr Ishaq denied theft but admitted to altering items on Horizon out of necessity in order to reconcile the accounts and due to the system malfunctioning. The defence sought any information relating to the malfunctioning of the Horizon system generally (such as the outcome of any enquiries or investigations or any internal memoranda recording malfunctioning) and the data produced by Horizon. The defence repeatedly sought disclosure in relation to Horizon and instructed an accountancy expert to analyse the accounts.

217. POL produced evidence to demonstrate the integrity of Horizon and relied in particular upon the involvement of Mr Jenkins who provided witness statements and contributed to a joint expert report. In a served witness statement dated 15 January 2013, Mr Jenkins defended the integrity of the Horizon system.

218. On 5 February 2013, the defence made a formal application to a judge for further disclosure on Horizon. The application was refused. On 20 February 2013, the defence served an addendum defence statement which alleged Horizon malfunction and set out reports of technical faults which Mr Ishaq had made to the Horizon Helpdesk. He had also made reports to the National Business Support Centre about shortfalls and discrepancies.

219. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Ishaq's case. ARQ data for the indictment period was provided to the defence on 26 October 2012. It is unclear what, if any, analysis was performed with it. There was no examination of that data for bugs, errors or defects or for evidence of theft. It appears there was no evidence to corroborate the Horizon evidence. The fact that Mr Jenkins provided witness statements in itself suggests that POL did not disclose the full and accurate position regarding the reliability of Horizon. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

220. POL concedes only that Mr Ishaq's 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.

David Hedges

221. On 7 January 2011, in the Crown Court at Lincoln, David Hedges pleaded guilty to one count of theft in the sum of £23,660.89 and three counts of fraud. On 4 February 2011,

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he was sentenced to seven months' imprisonment suspended for 18 months with an unpaid work requirement of 125 hours. He was ordered to pay prosecution costs in the sum of £1,000.

222. Mr Hedges had a history of long service, working as an SPM from 16 November 1994 until his suspension on 5 May 2010. He had expressed his anxiety about unexplained shortfalls since 7 July 2005 which he described to POL as a "dramatic drain" on his resources. He reported a loss of £4,000 in March 2009, agreeing to pay it back from his salary. An intervention visit took place on 6 May 2009. A report of that visit noted that Mr Hedges was doing everything that was required of him as an SPM and that it was not possible on that occasion to identify the cause of the high losses at the branch.

223. The branch was audited on 5 May 2010. A shortfall of £23,621.84 in cash and £39.05 in stock was identified (which together represent the sum on which Mr Hedges was indicted). In interview, Mr Hedges denied theft but admitted to inflating the cash figures on the branch trading statement in order to balance the accounts and to hide increasing shortfalls. He admitted to deploying three fictitious cheques for the same purpose. He said that there was something wrong with the Horizon system which had been longstanding.

224. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Hedges' case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. Despite Mr Hedges' extensive history of co-operation with POL, there was no investigation into the root cause of the shortfalls. There was no proof of an actual loss as opposed to Horizon-generated shortages.

225. POL concedes only that Mr Hedges' 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 convictions are unsafe. Notwithstanding his guilty plea, we quash his convictions on all four counts.

Peter Holmes (deceased)

226. The appeal of Peter Holmes is brought posthumously by his widow Mrs Marion Holmes. On 22 December 2009, in the Crown Court at Newcastle upon Tyne, Mr Holmes pleaded guilty to four counts of false accounting, asking for nine similar offences to be taken into consideration. He was acquitted of theft by direction of the judge. We understand that the alleged shortfall was £46,049. On 29 January 2010, he received a community sentence order with a three-month curfew.

227. Mr Holmes was employed for over 13 years as an SPM at Jesmond Sub Post Office and had served as a police officer for 12 years prior to this. In interview, he had said that he had no idea why there was a discrepancy unless "it's the Horizon that has let us down". He denied theft but accepted that he had been covering up the shortfall. The defence statement accepted false accounting but denied theft. It repeated that he believed Horizon was at fault and had created the shortfall. He also complained about the adequacy of the investigation. He raised a complaint about the training provided when Horizon was introduced.

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228. The prosecution relied upon three receipts for cash deposits, a transaction log, the branch trading statements, cash declarations and "variance checks" – all produced by Horizon.

229. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Holmes' case. ARQ data was obtained but it is not clear whether it was disclosed. It appears there was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall. There was possible evidence of dishonesty relating to cash declaration. POL accepts, however, that that did not obviate the need for proving an actual loss.

230. POL concedes only that Mr Holmes' 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on all four counts. We repeat the condolences that we expressed at the hearing to Mrs Holmes.

Rubina Shaheen

231. Although the court record sheet no longer exists and there is some doubt about the content of the indictment, it appears that, on 22 November 2010, in the Crown Court at Shrewsbury, Rubina Shaheen pleaded guilty to one count of false accounting. We understand that there was an indicted shortfall of £43,269.10. On 17 December 2010, Ms Shaheen was sentenced to 12 months' imprisonment. As a result of her prosecution, she was forced to auction her home so that, upon release from prison, she and her husband had to sleep in a van for six weeks and were dependent on a food bank before they were provided with bedsit accommodation.

232. In interview, Ms Shaheen said that she had been experiencing problems with Horizon and produced a list of figures in support of what she said. By the time of the defence statement, she denied theft and denied that she was responsible for the deficiency. She said she could not explain the discrepancy. She accepted that the prosecution had demonstrated that her explanation in interview could not account for the bulk of the shortfall which she believed was due to poor record-keeping. The prosecution investigation only accounted for £32,000 of the £43,000 shortfall.

233. POL accepts that, although there are no witness statements or exhibits available from the original proceedings, it would appear that Horizon evidence was essential to the prosecution case. The fact that the explanation which the appellant proffered in interview was disproved did not obviate the need for a full investigation, particularly because the POL investigation had only accounted for part of the shortfall. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall. POL accepts that in this case it failed to have regard to the bigger picture, namely that in 2007 there was an "intervention visit" by a POL representative. The accompanying report set out the various errors that Ms Shaheen was making, and the account was reduced to just over £8,000. We have already referred to the troubling attendance note in Ms Shaheen's case in which she was said to be "using solicitors who have jumped

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on the Horizon bandwagon" and in which the need to "win" was expressed as being "absolutely vital".

234. POL concedes only that Ms Shaheen's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her conviction is unsafe. Notwithstanding her guilty plea, we quash her conviction.

Damien Owen

235. On 7 December 2011, in the Crown Court at Mold before HHJ Parry and a jury, Damien Owen was convicted of the theft of £24,867.99. On 23 December 2011, he was sentenced to eight months' imprisonment.

236. The prosecution case (in short) concerned Horizon transactions on 23 July and 26 July 2010. Following a POL audit on 9 August 2010, it was alleged that Mr Owen stole money and covered up theft by inflating the coin on hand which he knew was not checked. However, when he discovered that Horizon Online was being installed in his branch, he changed the records to reduce the level of coin on hand which increased the level of stock. In interview, Mr Owen said the branch had transferred to Horizon Online on 23 July 2010, when a thorough cash check was carried out and the accounts balanced. He could not explain the shortage.

237. In his first defence statement, Mr Owen denied that he had falsified accounting records or stolen any money. The defence statement said: "The defendant does not know whether the accounting procedures adopted to produce this information are accurate, nor whether there is a shortfall as alleged. Further, it is Mr Owen's understanding that the accounting systems operated by the Post Office are notorious for producing imbalance anomalies."

238. An amended defence statement was served shortly before trial. The amendments concerned the role of the SPM (Mr Owen was a member of staff but ran the post office for the SPM pursuant to a private agreement). Mr Owen put the prosecution to strict proof that any doubtful entries in the Horizon system were performed by him rather than the SPM on 23 July 2010. He now accepted inputting correctional data on 26 July 2010, but on instruction from POL.

239. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Owen's case. Despite the fact that the discrepancies on which the prosecution relied were found at an audit a mere two weeks or so after the branch transferred to Horizon, POL showed no concern that the new system might be to blame. There was no investigation into the root cause of the shortfall. There is nothing to indicate any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. The issues raised by Mr Owen in interview were not investigated. There was no proof of an actual loss as opposed to a Horizon-generated shortage.

240. POL concedes only that Mr Owen's 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

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appeal both on Ground 1 and on Ground 2. His conviction is unsafe. We quash his conviction.

Mohammed Rasul

241. On 20 June 2007, in the Crown Court at Manchester Minshull Street before HHJ Lever, Mohammed Rasul pleaded guilty to 21 counts of theft. The precise amount to which he pleaded guilty is not clear but it was probably either £11,907.52 or £10,237.19. On 19 July 2007, he received a community sentence order with 100 hours of unpaid work and a three-month curfew requirement. He was ordered to pay £500 towards prosecution costs. We understand that he paid to POL the amount charged in the indictment.

242. On 1 July 2004, Mr Rasul reported that the barcode scanner on counter position 2 was not reading. The problem was reported again on 3 July 2004 and a loose cable was fixed. Following an audit on 10 March 2005, POL alleged (among other things) that Mr Rasul was responsible for a shortfall of £14,118.79 caused by pension and allowance overclaims. In a voluntary interview on the day of the audit, he made no admissions to theft or to overclaiming the pension and allowance submissions made to the Department of Work and Pensions. He was presented with a transaction log which showed the most recent discrepancy of £685.80 from the Cash Account Period ("CAP") week 48. He remembered that he had scanned two pension and allowance dockets twice but was unsure if it was on this occasion.

243. He was presented with a pension and allowance schedule which showed discrepancies amounting to £10,923.72 covering numerous other CAP weeks. It was also put to him that discrepancies had been found in other CAP weeks amounting to £936.07 in addition to the £685.80 discrepancy in CAP 48. He was shown other potentially incriminating information relating to pensions and allowances, such as information collated by a third party on behalf of the DWP. Horizon data for various CAP weeks revealed that the barcode on benefit books had been scanned twice. The period in which it was alleged that thefts were occurring appears to have been from 5 May 2004 to 23 February 2005. Mr Rasul explained that he had experienced problems with the Horizon system following the installation of an ATM at his office.

244. In a formal interview on 2 June 2006, Mr Rasul essentially confirmed his first account. Further DWP evidence was put to him. Mr Rasul denied stealing POL funds and said that if he had an explanation, he would have offered it, apart from a couple of occasions when he had scanned a book twice. He said that he never received any Horizon screen prompt to show a docket had been scanned twice.

245. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Rasul's case. Although the prosecution relied on DWP evidence, the discrepancy which led to the theft charge was dependent on the difference between the DWP records and the Horizon printout: POL accepts that there is insufficient freestanding, independent evidence from DWP to demonstrate theft. There was no evidence from the recipients of the pension and allowances to say they had not received the money as alleged.

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246. POL accepts that there was insufficient investigation of the problems raised by Mr Rasul relating to the scanner and the ATM. Although ARQ data was obtained, it is not known if it was analysed or disclosed.

247. POL concedes only that Mr Rasul's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on all 21 counts.

Wendy Buffrey

248. On 8 April 2010, in the Crown Court at Gloucester before HHJ Picton, Wendy Buffrey pleaded guilty to two counts of fraud. On 18 October 2010, HHJ Hart imposed a community sentence order with an unpaid work requirement of 150 hours on each count. Ms Buffrey was ordered to pay £26,250.63 compensation and £1,500 towards the costs of the prosecution.

249. It was the prosecution case that the figures in her accounts had been misrepresented to conceal a deficit of £26,256.63. In her basis of plea, Ms Buffrey accepted that she had committed the offence "knowingly and dishonestly" and that she had misrepresented the figures in her branch accounts in order to postpone the day when she would have to make good her losses. She accepted that the branch had incurred a trading loss of £21,256.63 during the indictment period. She accepted that she was responsible for making good that loss to POL. She said that she did not know what had caused the loss and had not taken any money.

250. The prosecution relied upon Horizon stock adjustments and branch trading statements. Statements from Penelope Thomas and Andrew Dunks from Fujitsu were served. Although the prosecution could prove that Ms Buffrey recorded a cash pouch as containing £22,000 when in fact it only contained £5,000 (Count 2), that physical evidence did not cover the entirety of the alleged loss or explain the reason why there was a £5,000 shortfall. In summary, the prosecution purported to have excluded human error as a reason for the shortfall but had not investigated the integrity of the Horizon system.

251. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Ms Buffrey's case. Although ARQ data was obtained, it is not known if it was disclosed. It appears there was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures or the root cause of the shortfall. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

252. POL concedes only that Ms Buffrey's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on both counts.

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Kashmir Gill

253. On 5 February 2010, in the Crown Court at Oxford before HHJ Hall, Kashmir Gill pleaded guilty to two counts of false accounting. POL alleged a shortfall of £57,306.20. Following her pleas, POL reviewed the case and decided that, as Mrs Gill had agreed to repay the full amount of the alleged shortfall, it was not in the public interest to proceed with a theft count, which was left to lie on the file. On 9 April 2010, Recorder Benson QC imposed a fine of £485 and ordered Mrs Gill to pay £1,500 towards the costs of the prosecution.

254. During an audit, Mrs Gill stated that she had inadvertently given the CashCo collector too much cash and/or had mistakenly put a pouch containing cash into the post bag collected by the postman. As a result, she had inflated the cash on hand figures to balance the accounts. Mrs Gill repeated this account in her interview. In a second interview she made it clear that she was not suggesting that she attributed the entire loss to this event and that "there may also have been errors within the ATM machine and other things". ARQ data was requested for the period 18 December 2008 to 17 June 2009 but was only produced for the period 20 March 2009 to 17 June 2009.

255. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Gill's case. There was no investigation of the matters she raised in her second interview, namely problems with the ATM machine. Irrespective of whether the account that she had given too much money to the CashCo collector was truthful, that still left open the question of how the shortfall arose. It appears there was no evidence to corroborate the Horizon evidence and no investigation into the integrity of the Horizon figures. Incomplete ARQ data was served. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

256. POL concedes only that Mrs Gill's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on both counts.

Barry Capon

257. On 9 October 2009, in the Crown Court at Ipswich before HHJ Goodin, Barry Capon pleaded guilty to four counts of false accounting. One count of theft was ordered to lie on the file. On 14 October 2009, he received a community sentence order with an unpaid work requirement of 180 hours.

258. At an audit, Mr Capon said that he had been inflating the cash on hand figure to cover earlier losses. His father was present at the audit and said that there had been problems since changing to Horizon Online. In interview Mr Capon stated that he had been inflating the cash on hand figures for the last 6-7 years. He explained that the problems arose when they changed to Horizon Online. There had been a problem with cheques, for several thousand pounds, and he had expected to receive an error notice, but it had never been forthcoming. Mr Capon raised a specific issue with giro cheques. He had kept a list of the shortages.

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259. While the prosecution may have been able to disprove some of the specific matters on which Mr Capon had relied in his interview, POL accepts that the prosecution engaged in rebuttal rather than direct proof that there was a loss and direct proof of its cause. One of the POL investigators wrote that "there was no evidence to show shortages were not caused by clerical errors".

260. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Capon's case. ARQ data was retrieved but was only examined in relation to giros and was never examined for bugs, errors or defects. It is unclear whether it was disclosed. It appears there was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

261. POL concedes only that Mr Capon's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on all four counts.

Vijay Parekh

262. On 8 November 2010, in the Crown Court at Harrow before HHJ Mole, Vijay Parekh pleaded guilty to the theft of £74,880.75. On 10 January 2011, Recorder Kogan sentenced him to 18 months' imprisonment. The funds alleged to be missing were repaid to POL prior to sentence.

263. The loss came to light as a result of a POL audit carried out on 30 April 2009 when Mr Parekh was an SPM at Willesden Post Office. The amount of the loss was calculated by reference to the Horizon system. In interview, Mr Parekh described financial difficulties at the branch and stated that he had used Post Office money in order to repay transaction corrections, staff wages, National Insurance and council tax. He denied any intention of making a gain for himself. In his defence statement for trial, he raised Horizon faults.

264. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Parekh's case. ARQ data was possibly obtained around October 2010 but it is not clear whether it was analysed or disclosed. It appears there was no evidence to corroborate the Horizon evidence. Mr Parekh had raised problems about unexplained shortfalls. There was no investigation into his account in interview or into the root cause of the shortfalls.

265. POL concedes only that Mr Parekh's prosecution was unfair (Ground 1). Mr Altman submits that, in this case, where Mr Parekh admitted taking money for purposes such as his council tax, the various failures in investigation and disclosure – which have been accepted by POL – are not of such gravity as to warrant a finding of second category abuse of process. We disagree. This is a "Horizon case" to which our general concerns apply. Further, as Mr Patel submitted, when Mr Parekh pleaded guilty, Mrs Misra's trial had very recently concluded. In her case, the integrity of Horizon was specifically addressed as an issue in the trial with evidence from Gareth Jenkins. Any reasonable prosecutor, concerned with the interests of justice, would have had questions about Horizon at the front of its consideration. Mr Parekh was 51 years of age at the time of

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conviction and (like other appellants) of previous good character. Yet POL appears to have learned nothing from any aspect of Mrs Misra's case.

266. We conclude that Mr Parekh's prosecution was an affront to justice (Ground 2). The public interest requires us to mark this 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.

Lynette Hutchings

267. On 30 July 2012, in the Crown Court at Portsmouth, Lynette Hutchings pleaded guilty to one count of false accounting. POL offered no evidence against her on one count of fraud and a "not guilty" verdict was entered. The alleged shortfall was £10,814.83. On 24 August 2012, Recorder Watson QC imposed a community sentence order with an unpaid work requirement of 120 hours.

268. Between 1 June 2010 and 5 April 2011, Ms Hutchings had made 33 calls to the National Business Support Centre, two of which related to losses or gains. Dip samples covering 13 January 2010 and 30 March 2011 showed that she had made four calls to the Horizon Helpdesk for advice.

269. Ms Hutchings produced a prepared statement at her interview under caution, saying that problems had arisen since her branch had transferred to Horizon Online. She had believed that the incorrect balances would be sorted out by transaction corrections in the fullness of time. She had not stolen any money, nor had she acted dishonestly. She gave specific examples of problems she had experienced including the fact that POL advice was difficult to access and unreliable.

270. In her written basis of plea, Ms Hutchings said that she had balanced the books to put off the evil day of having to sort out the muddle. She did not take any money, nor had she intended to. That basis was not accepted by the prosecution, but they did not contest it.

271. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Ms Hutchings' case. ARQ data was requested but it is not known if it was obtained. It appears there was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. The investigation concentrated on proving how the accounts were falsified, which was admitted, rather than examining the root cause of the shortfall. There was no investigation of Ms Hutchings' complaints as set out in her prepared statement. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

272. POL concedes only that Ms Hutchings' prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her conviction is unsafe. Notwithstanding her guilty plea, we quash her conviction.

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Dawn O'Connell (deceased)

273. The appeal of Dawn O'Connell is brought posthumously by her son Matthew O'Connell. On 11 August 2008, in the Crown Court at Harrow before HHJ Arran, Mrs O'Connell pleaded guilty to five counts of false accounting. A count of theft was ordered to lie on the file. The alleged shortfall was £46,469.15. On 12 September 2008, she was sentenced to 12 months' imprisonment suspended for two years with an unpaid work requirement of 150 hours.

274. In short, the factual basis for the conviction related to an audit carried out by POL in February 2008 at Mrs O'Connell's branch in Northolt. During the audit, she admitted the shortage and said that she could not explain how it had occurred despite having tried to identify the cause. In her interview under caution, she stated that the issue had begun with an initial shortfall of £10,000 in July 2007. Over time, the deficit had accumulated to approximately £45,000. She admitted declaring cash which was not there in order to "buy time" and protect her job. She denied theft but accepted falsifying the accounts. Statements were taken from the other employees working at the branch but they did not incriminate Mrs O'Connell.

275. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs O'Connell's case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. The investigation concentrated on proving how the accounts were falsified, which was admitted, rather than examining the root cause of the shortfall. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

276. POL concedes only that Mrs O'Connell's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on all five counts. We repeat the condolences that we expressed at the hearing to Matthew O'Connell and to Mark O'Connell who attended the appeal hearing with him.

Carl Page

277. On 15 November 2006, in the Crown Court at Stafford before HHJ Mitchell, Carl Page pleaded guilty to theft. The indicted shortfall was £282,000. On 19 January 2007, he was sentenced to two years' imprisonment following a basis of plea which accepted the theft of £94,000. We were told that Mr Page went bankrupt before any confiscation proceedings could be instituted.

278. Mr Page and a co-defendant, John Whitehouse, were jointly charged with conspiracy to defraud and theft. At a trial in the summer of 2005, the jury acquitted both of conspiracy to defraud but was unable to reach a verdict on theft. Mr Page was retried on his own for theft. He pleaded guilty on the first day of the retrial.

279. POL's case at the first trial was that Mr Page had colluded to steal money with Mr Whitehouse, who was a customer. That case was not maintained at the second trial at which POL alleged that Mr Page had physically stolen £282,000 from the branch and

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hidden the losses on the foreign exchange system. The theft was alleged to have taken place between 1 March 2002 and 14 July 2003.

280. In his defence statement for the second trial, Mr Page denied that he had been dishonest, saying that POL could not prove how much money ought to have been in the accounts at the beginning or end of the indicted period, or when or how money was taken.

281. The amount of the theft in the second trial was reduced to £94,000 following an accepted basis of plea, which asserted: "The Defendant stole £94,000 from the Post Office having begun to do so on return from holiday in August 2002. The remaining deficit of £188,000 may have been the result of incompetent accounting or possibly theft by other person(s)". The underpinning rationale for that reduced figure is no longer clear.

282. POL relied on Horizon data to evidence the missing £282,000. Two separate defence expert reports noted that the prosecution case was almost exclusively based on the missing money in Horizon but POL argued that it was also based on data from the Forde Moneychanger (which is separate from Horizon).

283. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Page's case. The defence experts were critical of the POL audit and the conclusions to be drawn from it. One of the defence experts expressed the opinion that the shortfall could be attributable to unidentified errors in Horizon and noted the high incidence of errors in the system. This expert disagreed with the prosecution assertion that the shortfall automatically amounted to theft without further evidence.

284. Despite the fact that Horizon's reliability was plainly raised by the defence, there is no evidence of any investigation into the root cause of the shortfall. There is nothing in POL's case papers to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortage. We also regard it as unsatisfactory (to say the least) that Mr Page was subjected to cross-examination in the first trial on a basis which POL felt unable to sustain thereafter.

285. POL concedes only that Mr Page's 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.

Lisa Brennan

286. On 4 September 2003, in the Crown Court at Liverpool before HHJ Phipps and a jury, Lisa Brennan (who had become a POL counter clerk when she was 16 years old) was convicted on 27 counts of theft representing a shortfall of £3,482.40. She was acquitted on five further counts. On 6 September 2003, she was sentenced to six months' imprisonment suspended for two years. On 11 May 2004, her appeal against conviction (on the basis of inconsistent verdicts) was dismissed (*R v Brennan* [2004] EWCA Crim 1329). As a result of the proceedings against her, she was forced to file for bankruptcy.

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287. POL decided to pursue criminal charges against Ms Brennan in relation to events in 2001 – close in time to the rollout of Horizon. According to the limited available documentation, the prosecution case was that when she paid out cash for allowance and benefit vouchers, she removed more cash than was permitted by the voucher and kept the difference herself. The evidence of theft depended on the difference between the amount Horizon showed had been entered onto the system and the lesser amount of the voucher.

288. Ms Brennan admitted the discrepancies. She said that they were errors on her part because of problems at home and pressures of work. She denied theft and said she did not know what had happened to the money.

289. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Ms Brennan's case. Her explanation was that she must have made keystroke errors when entering voucher amounts onto Horizon. The prosecution did not consider whether a bug, error or defect could have affected this process. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. The issue at trial was dishonesty but there was insufficient proof of an appropriation.

290. POL concedes only that Ms Brennan's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. We quash her convictions on all 27 counts.

William Graham

291. On 16 October 2009, in the Crown Court at Norwich before HHJ Patience QC, William Graham pleaded guilty to two counts of false accounting. One count of theft was ordered to lie on the file. The alleged shortfall was £65,521.07. On 14 January 2011, HHJ Macdonald QC sentenced him to 32 weeks' imprisonment suspended for 18 months with an unpaid work requirement of 100 hours.

292. During a POL audit, Mr Graham admitted to false accounting. In interview he repeated those admissions but was adamant that he had not stolen any money. In his defence statement, he denied theft. He denied falsifying accounts with a view to gain for himself or to cause loss to his employer. He had noticed a loss of £50,000 at the end of 2008 and had assumed that he had made a mistake. He had previously suffered a shortfall of £5,000 which he had repaid, and he panicked. A basis of plea was submitted to the judge but no copy is now available.

293. The defence instructed a forensic accountancy expert who challenged the Horizon system. The expert stated that the shortfall might be because of a computer error and asserted that faults in disclosure had prejudiced Mr Graham's case. ARQ data was in this case obtained and disclosed as unused material.

294. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Graham's case. It appears there was no evidence to corroborate the Horizon evidence and no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

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295. POL concedes only that Mr Graham's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on both counts.

Siobhan Sayer

296. On 18 January 2010, in the Crown Court at Norwich before HHJ Barham, Siobhan Sayer pleaded guilty to one count of fraud. The alleged shortfall was £18,997. On 15 February 2010, Recorder Wilson sentenced her to 40 weeks' imprisonment suspended for 18 months with an unpaid work requirement of 200 hours. A confiscation order was made against her in the sum of £4,800.

297. In her interview, Mrs Sayer stated that her branch had been incurring losses since 2004 and admitted inflating the cash on hand figures as a result. She became GRO during the interview, which was suspended. She was subsequently interviewed on a separate occasion at which a prepared statement was read out. She complained about inadequate training and the lack of supervision. She had GRO found it hard to cope. She had contacted the Helpline but received no meaningful assistance. She denied any dishonest intent.

298. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Sayer's case. ARQ data was obtained but it covered only part of the indictment period and appears not to have been analysed by the prosecution. It appears that there was no evidence to corroborate the Horizon evidence and no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

299. POL concedes only that Mrs Sayer's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her conviction is unsafe. Notwithstanding her guilty plea, we quash her conviction.

Timothy Burgess

300. On 12 August 2011, in the Crown Court at Teesside before Recorder Slater, Timothy Burgess pleaded guilty to one count of false accounting. The prosecution offered no evidence on a theft charge to which a "not guilty" verdict was entered. The alleged shortfall was £7,525.65. On 1 September 2011, HHJ Bowers imposed a community sentence order with an unpaid work requirement of 150 hours.

301. At a POL audit, Mr Burgess had told investigators that he had borrowed £1,300 from POL. He later retracted that statement, saying it was a lie and that the shortages had arisen as a result of mismanagement and errors. In interview, he explained that he had been declaring false figures for four years, after he had become the victim of a cheque fraud. He was unable to explain how the cash shortages had arisen. The audit occurred during the upgrade of Mr Burgess's branch to Horizon Online.

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302. We treat this as a "Horizon case" because POL accepts that this was in part an unexplained shortfall case and accepts that evidence from Horizon was essential. Based on the papers available from the criminal proceedings, there is nothing to suggest that any ARQ data was obtained. There was no evidence to corroborate the Horizon evidence. There was no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

303. POL concedes only that Mr Burgess's 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.

Pauline Thomson

304. On 1 February 2010, in the Crown Court at Maidstone before Recorder Taylor, Pauline Thomson pleaded guilty to three counts of false accounting. One count of theft was ordered to lie on the file. The alleged shortfall was £34,331.41. On 18 March 2010, HHJ St John Stevens imposed a community sentence order with an unpaid work requirement of 120 hours.

305. At a POL audit, Ms Thomson accepted that the cash on hand would be about £40,000 short. She could offer no explanation. She had kept quiet about it through panic. The defence statement raised (among other things) the possibility that the discrepancy was caused by Horizon malfunction or error. The prosecution was put to strict proof that Horizon produced accurate accounts of cash held at the branch. A number of detailed disclosure requests concerning the Horizon system were made. A defence forensic accountancy expert was of the opinion that there was "a paucity of evidence that any loss was caused by dishonest actions of Ms Thomson".

306. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Ms Thomson's case. Although ARQ data was requested, it is not clear whether it was obtained. It appears that there was no evidence to corroborate the Horizon evidence and no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

307. POL concedes only that Ms Thomson's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on all three counts.

Nicholas Clark

308. On 24 February 2010, in the Crown Court at Grimsby, Nicholas Clark pleaded guilty to seven counts of false accounting. The prosecution offered no evidence on one count of theft. The alleged shortfall was £7,694.49. He was sentenced to six months' imprisonment suspended for two years with an unpaid work requirement of 220 hours.

309. During a POL audit, Mr Clark had accepted that he knew that the branch ATM did not contain the amount of cash that Horizon indicated it should contain. He said that he

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owed POL £7,000. At the start of his interview under caution, he handed over a cheque for the shortage amount. He produced a prepared statement in which he said that he was owed money by a friend and his "balancing" had got out of hand.

310. Mr Clark did not admit theft or false accounting in his prepared statement but, when answering questions in interview, he accepted that he had falsified accounts since August 2008 by inflating the cash on hand figures. In his written basis of plea, he said that he had done so in order to give himself time to make good the loss and in the hope that the shortfall might balance out subsequently.

311. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Clark's case. It appears that there was no evidence to corroborate the Horizon evidence and no investigation into the integrity of the Horizon figures. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

312. POL concedes only that Mr Clark's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on all seven counts.

Margery Williams

313. On 16 February 2012, in the Crown Court at Caernarfon before HHJ Jones, Margery Williams pleaded guilty to four counts of fraud. The alleged shortfall was £14,633.57. On 3 May 2012, she was sentenced to 52 weeks' imprisonment suspended for 18 months with an unpaid work requirement of 200 hours.

314. The alleged shortfall was the result of a POL audit on 3 June 2011. During the audit, Mrs Williams had given no reason for the shortage. In her interview under caution, she admitted that she had inflated figures relating to cash on hand and to stamp books. She knew that it was criminal to produce false accounts but denied stealing. She did not know what had produced the shortfall and added: "I know we had the new system on the computer… Horizon online".

315. Call logs suggest that, on 24 October 2009, Mrs Williams had informed POL that she was having "problems with the system" and that she had reported a power cut on the same day. She was "advised to call (an) electrician" for the power cut and transferred to the Horizon Helpdesk for the system problem.

316. The temporary SPM who took over from Mrs Williams also suffered problems with balancing. There are emails from that SPM to POL complaining about the problems. They do not appear to have been disclosed.

317. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Williams' case. There was a failure to investigate the issues that she raised in interview. Based on the papers available from the criminal proceedings, there is nothing to suggest any ARQ data was obtained. There was no evidence to corroborate the Horizon evidence. There was no proof of actual loss as opposed to a Horizon-generated shortfall.

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318. POL concedes only that Mrs Williams' prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on all four counts.

Tahir Mahmood

319. On 17 November 2005, in the Crown Court at Birmingham before HHJ Griffith-Jones, Tahir Mahmood pleaded guilty to six counts of false accounting and asked for 84 similar offences to be taken into consideration. The alleged shortfall was £33,437.39. On 21 December 2005, Recorder Stevens sentenced him to nine months' imprisonment.

320. On 30 April 2005, POL auditors had made a visit to Mr Mahmood's branch. He informed them that the branch was about £25,000 short. The audit was completed and a shortage of £33,437.39 was identified.

321. In interview under caution on 4 May 2005, he said that he had been incurring large losses since a previous audit in March 2003. The first loss had been shortly after that audit and was in the region of £400 to £500. He had been falsely inflating the cash account balance every week since then. He had done this in order to hide the losses which he could not afford to pay, believing that his contract would be terminated if POL discovered the truth of the situation. Mr Mahmood denied taking any of the money for himself, and said he believed the losses had been caused by giving cash to customers by mistake.

322. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Mahmood's case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no investigation into the matters raised by Mr Mahmood during his interview – even though he had volunteered a time period in which the problems had begun. There was no evidence to corroborate the Horizon evidence. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

323. POL concedes only that Mr Mahmood's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on all six counts.

Ian Warren

324. On 30 March 2009, in the Crown Court at Chelmsford before HHJ Goldstaub QC, Ian Warren pleaded guilty to one count of theft. The alleged shortfall was £18,412.50. On 2 November 2009, he was sentenced to nine months' imprisonment suspended for 18 months with an unpaid work requirement of 75 hours. Three counts of false accounting were left to lie on the file.

325. On 9 and 10 April 2008, POL carried out a two-day audit at Mr Warren's branch which led to the allegation of a shortfall. A large proportion of the alleged shortfall was said to come from stock, namely an overstatement of the lottery scratch cards on hand. In

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his interview under caution, Mr Warren said that the system he had for scratch card sales "fell down" because he got "sloppy" due to "work pressures and exhaustion". He admitted that he would put forward the cash figure he was "supposed to have" from the Horizon printout, rather than the cash figure he actually had. He could not explain the missing money, saying that he could not have lost it: something else must have gone wrong.

326. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Warren's case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no investigation into the matters raised by Mr Warren during his interview as to problems with accounting procedures. It appears that there were financial irregularities after a new SPM took over from Mr Warren but it is not clear if the existence of those irregularities was disclosed. Although the prosecution purported to disprove Mr Warren's case about the lottery scratch cards, POL did not prove that there was an actual loss as opposed to a Horizon-generated shortfall.

327. POL concedes only that Mr Warren's 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.

David Yates

328. David Yates started as a Post Office counter clerk in 1979 and became an SPM in 1993. On 12 September 2003, in the Crown Court at Guildford before HHJ Addison, he pleaded guilty to one count of theft. The alleged shortfall was £356,541.35. On 31 October 2003, he was sentenced to three years' imprisonment.

329. There is little contemporaneous material available in relation to his case and it is in any event only necessary to summarise matters. A POL audit of Mr Yates' branch had taken place on 6 March 2003 and he was interviewed under caution on 7 March 2003. At interview, he admitted to inflating his cash figures over three to five years in order to conceal an ever-increasing shortage, due to his expenditure exceeding his income. This had included the period before Horizon was installed at his branch on 11 July 2000. Mr Yates claimed that the cash was used to pay for (among other things) personal bills and loan repayments.

330. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Yates' case. Although Mr Yates admitted theft during his interview, this was against a background of unexplained shortfalls. Importantly, POL accepts that the vast majority of the "loss" represented an accumulated shortfall rather than any theft.

331. 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

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appropriation by him. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings.

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.

Harjinder Butoy

333. On 25 September 2008, in the Crown Court at Nottingham before HHJ Teare and a jury, Harjinder Butoy was convicted of ten counts of theft relating to an alleged shortfall of £206,376.76 between August 2006 and April 2007. The prosecution case in respect of each count was that he had made false entries on Horizon in relation to the payment of cheques, in order to balance the system and allow him to steal cash held to that value. He was acquitted of a further count of theft, where no cheque was alleged to have been used to conceal the loss of cash.

334. On 27 October 2008, Mr Butoy was sentenced by HHJ Teare to 39 months' imprisonment. On 6 March 2009, a confiscation order was made against him in the sum of £61,294.34. He was also ordered to pay compensation in the same sum to POL.

335. Mr Butoy had been unable to provide an explanation for the cash shortages during his interview under caution. His first defence statement, dated 24 January 2008, made it clear that he denied theft and false accounting. In a second defence statement, dated 2 April 2008, he said that POL could not prove the existence of the underlying cash which it was alleged that he had stolen. He challenged the Horizon system which he described as "plagued with technical problems".

336. Defence accounting and IT experts were instructed. Detailed disclosure requests were made in respect of Horizon and its underlying data. It appears that POL disclosed full ARQ data as well as details of the relevant Horizon transactions and logs of calls to the Horizon Helpline. On the other side of the scales, statements from Fujitsu employees attested to Horizon's reliability. Ultimately, the issue of Horizon's unreliability was not pursued at trial – possibly because the defence experts had struggled to understand the Horizon system.

337. Much later, Mr Butoy applied for leave to appeal to this court, seeking an extension of time of around nine years. It appears that his grounds of appeal were founded on the unreliability of Horizon in light of reports about the Horizon system that had come to light since his trial. His application was refused on the papers but he renewed it orally, appearing in person at a hearing on 11 October 2018. POL was not represented at the hearing but relied on a written respondent's notice.

338. The court (Macur LJ, Julian Knowles J and HHJ Wall QC as he then was) refused the renewed application: *R v Butoy* [2018] EWCA Crim 2535. The transcript of the court's ruling summarises the effect of the respondent's notice at [11]:

> "First, they say it is not arguable that the convictions are unsafe on the basis that the Horizon system was shown to be unreliable and open to errors. Furthermore… although Horizon was

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> involved in the alleged thefts (proved thefts as the jury found them to be) it was not at the heart of the thefts – what lay at the heart of the thefts were the missing cheques and the applicant's inability to explain why it was when the paperwork was otherwise in order that these cheques should have gone missing. They also point out that during the course of the trial there was an agreed fact before the jury that at all material times the Horizon system had been operating properly."

339. Despite its previous position before this court, POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Butoy's case. Although POL emphasises the paper trail, proof that money had been stolen depended upon the Horizon evidence. There was a detailed investigation into Horizon, including securing the ARQ data, but there was no disclosure of what is now known about Horizon's unreliability as determined by Fraser J. On the contrary, there was an agreed fact which attested to the reliability of the Horizon system. The data was not tested for the presence of bugs, errors and defects.

340. POL concedes only that Mr Butoy's 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 convictions are unsafe. We quash his convictions on all ten counts.

Gillian Howard

341. On 26 April 2011, in the Crown Court at Bradford before Recorder Isaacs, Gillian Howard pleaded guilty to one count of fraud. The alleged shortfall was £45,850.05. On 26 May 2011, HHJ Durham Hall imposed a six-month community sentence order with a six-month supervision requirement.

342. Mrs Howard's husband was the SPM of New Mill Post Office until around June 2008 when he suffered a stroke and a subsequent heart attack. Before his illness, Mrs Howard had worked part-time on the newsagent side of the branch but she later took over the sole responsibilities of both SPM and managing the retail business. During their time running the branch, Mr and Mrs Howard had made 22 calls to the National Business Support Centre about unexplained shortfalls or other accounting problems relating to Horizon.

343. In her interview under caution, Mrs Howard accepted that the shortfall was – at least in part – due to the fact she was "never sure" she was completing the monthly balance correctly. She said that she would enter inflated figures into Horizon in order to make them balance. She denied taking any money from POL but said that she had noticed money start to go missing from the tills, perhaps as the result of the actions of another employee or as a result of her providing credit to some customers (which she recognised should not have happened).

344. Mrs Howard brought to the interview an extract from The Grocer magazine relating to glitches in Horizon, which she said made her wonder whether she had in fact been solely responsible for all of the shortfall. She said that she had never been confident

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using Horizon Online, since the branch had transferred to that system on 25 March 2010. Her account of the problems she faced was detailed and (so it seems) forthright.

345. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mrs Howard's case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. There was no investigation into the matters raised by Mrs Howard in interview. There was no examination of the numerous calls that she had made to the Helpline. None of the other staff at the branch was interviewed. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

346. POL concedes only that Mrs Howard's prosecution was unfair (Ground 1) but we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her conviction is unsafe. Notwithstanding her guilty plea, we quash her conviction.

David Blakey

347. On 17 December 2004, in the Crown Court at Great Grimsby before Recorder Kelly, David Blakey pleaded guilty to six counts of false accounting. One count of theft was ordered to lie on the file. The alleged shortfall was £65,366.46. On 25 February 2005, Recorder Gibson sentenced him to nine months' imprisonment suspended for two years. He was ordered to pay £1,000 towards the costs of the prosecution. The papers before us show that Mr Blakey and his wife were declared bankrupt in February 2006.

348. Mr Blakey was the SPM assistant, his wife having been the SPM at their branch from September 1996 until her contract of services was terminated in 2004. On 13 May 2004, auditors arrived at the branch because of disproportionately large cash on hand. Mr Blakey spoke to the audit team, admitting that there would be a significant shortage of cash, which he said had gone missing from the office "over the last few months". He co-operated with the auditors in providing a signed statement to that effect.

349. Mr Blakey told POL subsequently that he was aware money had been going missing for some time, but he was unable to replace it. Mr Blakey vehemently denied stealing the money, stating he had only covered up the shortages because he wanted to protect his wife and feared for her GRO should she find out. He said that he was the only person who inputted figures into Horizon.

350. In his interview under caution, Mr Blakey said that he did not know where or how the money had gone. He was hoping there was an error, but it did not "appear to be the case" and the figure had just accumulated.

351. POL accepts that this was an unexplained shortfall case and that evidence from Horizon was essential to Mr Blakey's case. There is nothing to indicate that any ARQ data was obtained at the time of the criminal proceedings. There was no evidence to corroborate the Horizon evidence. There was no investigation into the matters raised by Mr Blakey during his interview, nor was there any investigation into Horizon reliability. There was no proof of an actual loss as opposed to a Horizon-generated shortfall.

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352. POL concedes only that Mr Blakey's 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 convictions are unsafe. Notwithstanding his guilty pleas, we quash his convictions on all six counts.

Pamela Lock

353. On 6 November 2001, in the Crown Court at Swansea before Recorder Parry, Pamela Lock pleaded guilty to three counts of false accounting. One count of theft was ordered to lie on the file. On 29 November 2001, Recorder Powell imposed a community sentence order with 80 hours of unpaid work. Mrs Lock was (as we understand it) ordered to pay compensation to POL in the sum of £26,071.53. There is now very limited material available in relation to her case but it appears that this sum would have covered the whole of the alleged shortfall. She was ordered to pay £500 towards the costs of the prosecution. We have been told that, as a consequence of the criminal proceedings, Mrs Lock was forced into retirement and that she and her late husband were forced to sell the family home to avoid it being repossessed.

354. Mrs Lock had been the SPM of a branch in Cwmdu, Swansea since 1974. She says that in January 2000 the Horizon system was installed at her branch. She has accepted that she inflated the figures to make the accounts balance. She says that after six months the shortfall was £31,000 and so she cashed in an ISA for £5000 in order to reduce it.

355. Despite the shortage of available documents, POL properly accepts that the evidence from Horizon might have been essential to her prosecution and convictions. As Mrs Lock was charged with counts of false accounting, POL accepts that it is highly likely that the printouts from the Horizon system were the primary evidence in her case. While recognising the paucity of evidence still in existence, it is fair that we treat this case as a "Horizon case". There is no indication that ARQ data was obtained and so POL has assumed that there was no evidence to corroborate Horizon. There was no proof of actual loss as opposed to a Horizon-generated shortfall.

356. POL concedes only that Mrs Lock's prosecution was unfair (Ground 1) but, as it falls to be treated as a Horizon case, we are bound to conclude that her 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 her appeal both on Ground 1 and on Ground 2. Her convictions are unsafe. Notwithstanding her guilty pleas, we quash her convictions on all three counts.

Appellants in group C - the appeals opposed on both Grounds:

357. We turn next to the three appeals which are opposed on both Grounds. These are the appeals brought by Wendy Cousins, Stanley Fell and Neelam Hussain. It is necessary to consider each of these appeals separately since, as will appear and as might be expected, they involve different facts. In setting out those facts, we have drawn heavily from the case summaries which Mr Altman and Miss Johnson prepared and which were not, at least as we understood it, controversial or materially so.

358. Before doing so, it is convenient, first, to say something about the law, albeit only briefly, since we were taken to a number of authorities.

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359. The first of these was *R v Togher and others*, to which we have previously referred and in which the Court of Appeal held that a conviction should be liable to be quashed on the ground of abuse of process, even after a guilty plea, if the appellant had been unable to apply for a stay at trial because the facts constituting the abuse of process had not been disclosed by the prosecution. As Lord Woolf CJ put it at [33]:

> "… the circumstances where it can be said that proceedings constitute an abuse of process are closely confined … It has to be a situation where it would be inconsistent with the due administration of justice to allow the pleas of guilty to stand."

360. The other case to which we would refer at this juncture is *R v Kelly and Connolly*, another case to which we have previously referred and in which, having reviewed the relevant authorities (including *R v Togher and others* and *R v Bhatti*, an unreported decision made on 19 December 2000) Rix LJ stated as follows at [127]:

> "Ultimately, however, the test is of the safety of the conviction. For the reasons expressed in *Bhatti*, the scope for finding that an unequivocal and intentional plea of guilty can lead to an unsafe conviction must be exceptional and rare. However, undue pressure or errors of law or unfairness in the trial process may all be of such an important causative impact on the decision to plead guilty that the conviction which follows on such a plea can, in an appropriate case, be described as unsafe ... Ultimately, as the authorities emphasise, it is a question of fact in each case."

Wendy Cousins

361. Mrs Cousins was indicted with 17 counts of theft, covering the period April 2005 to October 2006. On the first day of trial (5 May 2009), in the Crown Court at St Albans, Mrs Cousins pleaded guilty to counts 2, 4, 6, 8, 9, and 11 to 16. POL offered no evidence on the remaining counts (1, 3, 5, 7, 10 and 17). She also accepted a schedule of 23 offences taken into consideration. The total loss to POL was calculated as £13,759.38.

362. Mrs Cousins had been the SPM at the Hertford Heath branch since 23 April 1997. She had one part-time employee with whom she shared a single Horizon log-in.

363. The thefts involved green giros ("giros"). The procedure for paying customers who presented a giro at a Post Office branch was explained as follows in prosecution counsel's opening note at the trial:

> "Green giro cheques are a method of payment used by the Department of Work and Pensions. Giros are sent out by post to customers and each giro has a date on it showing the earliest date that it can be cashed. When a cheque is presented at a counter for payment the clerk must check that it is valid for payment. Cheques are valid for a month. The clerk checks that the words and numbers on the cheque agree and that it is permissible for it to be cashed at that office. Proof of identity must be produced if the giro is for more than £100. The cheque must be signed on the

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> reverse by the payee (and the agent if an agent is collecting the money on a customer's behalf). The clerk date stamps the giro on the front and then enters the amount into the Office computer system by touching the green giro icon on the computer screen. The screen will then show the amount to be paid to the customer. The cash is handed over and the transaction is completed on the screen. The giro is retained by the clerk in their 'stock'. This is the name for the Post Office property (cash, receipts, stamps etc) for which a particular member of staff is responsible."

364. The Post Office accounting week ran from Thursday to Wednesday. At the end of each accounting week the SPM would check the actual giros physically present as against the Horizon summary of giros entered into the system. They should have been the same. A summary would then be placed at the front of the bundle of giros, a G6311 identification docket would be completed and put on the top of the bundle and the bundle would then be tied with an elastic band and put in a pouch ready to be collected by the postman for dispatch to Girobank (also referred to latterly as Alliance and Leicester).

365. The pouches to be collected would be written up on a collection card completed by someone at the branch. The collection card would be annotated with the number of priority items collected. A Girobank pouch was one such priority item. The postman would sign the collection card. Girobank would receive the giros sent by the branch with the accompanying summary. They would also receive information from POL's central accounting division in Chesterfield as to how much had been paid out for giros.

366. In relation to Mrs Cousins' branch, Girobank noticed a considerable discrepancy between the data which it received from Chesterfield, showing how much money had been paid out for giros, and the number of pouches received. Girobank notified POL about this, specifically that between April 2005 and June 2006, 12 pouches were missing. As stated in the opening note:

> "The Chesterfield data showed that there were a number of weeks where giro transactions were being performed at Hertford Heath but they had received no giros at all for those weeks. They wanted these 'missing pouches' to be investigated. Of course the truth was that the giros were not missing. Their despatch was simply being delayed until Mrs Cousins could recash them fraudulently."

367. The prosecution case was that Mrs Cousins had committed the theft by making some overclaims and many reintroductions. The opening note described an overclaim as "a claim for a giro that never existed". Elsewhere it has been described as occurring when a branch records a payment on Horizon but does not remit the associated giro (i.e. an amount is claimed as paid but there is no giro to support the claim). For example, if a customer cashed a single giro, but the SPM put the giro through Horizon twice, Horizon would register two payments in. This would create a cash surplus, because only one giro had been paid to the customer. This would allow the SPM to take the money which had purportedly been paid out for the "second" giro.

368. As for reintroductions, these were explained as follows in the opening note:

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> "A more sophisticated tactic is by the reintroduction of a legitimately cashed giro. Having correctly performed the giro transaction through Horizon the clerk retains the giro rather than despatching it and then re-cashes it in another week. The giro is date stamped when the reintroduction takes place. It is then sent off with the summary and because it appears on the summary and it has the date stamp for the appropriate week it has a legitimate appearance, even though the genuine transaction has taken place in an earlier week. If a genuine mistake had occurred where a cheque was cashed in one week but not accounted for until the next it would be expected that the Horizon accounts would show a loss for the first week and a gain in the second. This would be because in the first week cash would have been given out but there would be no document to account for the payment, thus producing a loss. In week 2 there would be a payment document, but no money would have been given out, thus producing a gain."

369. On 12 October 2006 (week 29) an audit took place at the branch but nothing suspicious was found. However, Lisa Allen, the investigator, checked that the giros at the branch had all been date stamped with the correct week. They had but Ms Allen noted that a number of customers had apparently cashed two cheques in week 29, and so she contacted Girobank to confirm whether the cheques for the previous week (week 28) had been received. They had not.

370. Ms Allen, then, obtained copies of the giros received from weeks 23 to 31 (30 August to 25 October 2006). Witness statements were taken from five regular customers. Ms Allen showed them some of their giros. They confirmed that the way the giros were date stamped was inconsistent with their usual practice of encashment. All the giros shown to the witnesses were stamped with dates from week 29. No giros had been received at the Girobank for the previous week. Thus, by way of example, one said that she visited Hertford Heath every Monday afternoon. As well as collecting her and her husband's pension, she cashed three giros each time on behalf of neighbours. She was shown the four week 29 cheques for one of those and the two cheques for the other. The earlier cheques could have been cashed from 2 October 2006 but all six are date stamped 9 October 2006. She stated that she only cashed two giros at a time for the first of her neighbours and one at a time for the other neighbour. The prosecution case was that she went to the Post Office on 2 October, her usual Monday, and cashed the giros valid from 2 October. She obtained the cash for those giros, but Mrs Cousins did not date stamp them then. She retained them for the witness's next visit on 9 October. She then reintroduced the cheques from the previous week at the same time that she cashed the giros that were valid on 9 October.

371. As for another of the witnesses, she told Ms Allen that she was only ever served by Mrs Cousins. She normally visited Hertford Heath every Thursday afternoon to cash a single giro to obtain her pension. She was shown two giros. The cheques were dated 28 September and 5 October and have her signature on the reverse but were both date stamped 6 October, a Friday. She stated that she may have broken her routine and attended on a Friday, but she did not cash two cheques on the same day. The prosecution case was that the reason that the two giros had the same date stamp is that

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the earlier giro was presented a week earlier by the witness: Mrs Cousins did not stamp it then but retained it for the next week when she could put it through the system again and pay the money to herself. The other witnesses told Ms Allen essentially the same.

372. On 5 December 2006, investigators re-attended Hertford Heath. The audit revealed no discrepancy on the Horizon system when transaction corrections were taken into account (it showed a surplus of £32.91). Later that morning, Mrs Cousins was interviewed on tape under caution. Mrs Cousins explained that she would take a giro from a customer, enter it on to Horizon, date stamp it, pay the customer and then pin the giro on a board she had for that purpose. She confirmed that she had always prepared the office balance and summarised the giros and prepared them for despatch. She stated, however, that a colleague had served behind the counter and that she may have handed the pouch to the postman and completed the collection card. Mrs Cousins said that she did the books each week after closing at 5.30 pm on a Wednesday night. She printed off two summaries of the giros. One she put in the pouch with the giros and the other she used to check the giros, ticking them off against that list. She sent the giros off once a week. They would be handed to the postman on a Thursday morning. Mrs Cousins was shown a schedule of giros from weeks 22 to 31. Mrs Cousins was unable to explain why giros which had been cashed in weeks 22 and 28 had appeared in the following weeks' pouches (23 and 29). All the giros had been signed by the customers. Mrs Cousins did not volunteer any explanation for the missing giros.

373. Mrs Cousins was shown the schedules of double encashments. She explained the habitual transactions of each regular customer. She stated she had "never" held back giros in the office and had done them "religiously" every Wednesday since she started working at POL. Mrs Cousins said that she "always" date stamped the giros as she cashed them into the system. She said that she "couldn't disagree" with the first witness to whom we have referred whose evidence was that she had never cashed two giros at a time, save for one occasion when "maybe" that witness cashed two giros. Mrs Cousins said that "by and large" it was right that the five customers did not cash two giros. The investigator noted that this would not result in the day changing. It was put to Mrs Cousins that if the double encashments were correct, the customers listed in the schedule were all claiming for more benefits than they were entitled to. Mrs Cousins had no answer to this suggestion. Mrs Cousins accepted that she could not provide a credible explanation but said that she wanted to speak to the customers herself.

374. POL collected all the giro encashments from week 5 (w/e 27 April 2005) to week 37 (w/e 6 December 2006). From this information, the prosecution created two schedules which were at the heart of the prosecution case. The first schedule set out the giro transactions in date order. The second schedule set out the giro transactions. The schedules were based on copies of all the giros and the transaction logs from Horizon. The schedule revealed a pattern of reintroductions and overclaims. By way of example, over a period of 81 weeks the first of the witnesses to whom we have referred appeared to have cashed 97 cheques. One cheque was for £350, not her normal amount. Ms Allen's conclusion was that nine giros were reintroductions and six were overclaims. The reintroductions were in the weeks following the non-receipt of a pouch. Ms Allen checked the cash accounts and branch trading statements for the period April 2005 to October 2006 and found no cash surpluses.

375. The defence statement summarised the nature of Mrs Cousins' defence in this way:

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> "The defendant will say at no stage did she steal any money belonging to the Post Office Limited and nor did she ever benefit from any such sort of theft. The defendant will say that she has only ever cashed those giro cheques presented by customers to her in the manner prescribed by the Post Office."

376. The defence statement denied dishonesty and denied knowledge of the reintroductions. It did not accept that POL suffered a loss. The information contained within the schedules was not accepted, in particular the records "alleged to have come from the Horizon computer system". It noted that Mrs Cousins' colleague prepared the pouches from "time to time" and noted a previous investigation by POL into that colleague. The defence statement was served on 23 May 2008.

377. The defence made several disclosure requests. It appears that prior to the hearing of that application, counsel were able to reach agreement as to what matters should be disclosed. An unused schedule was disclosed. It appears also that, following a quote for interrogating the hard drive, Fujitsu provided a witness statement dealing with issues raised by the defence instead of interrogating the hard drive.

378. The case was listed for trial on 8 September 2008. The trial did not, however, go ahead since there had been a recent change in counsel and the new defence barrister required more time to prepare for trial.

379. On or around 29 April 2009, a proposed basis of plea was sent to the prosecution. It read:

> "1. It is proposed that guilty pleas are entered to the following counts on the indictment: 2,4, 6, 8, 9, 11, 12, 13, 14, 15 and 16. The total value of these counts is £7,037.81.
>
> 2. There are arguments in respects of counts 1, 3, 5, 10 and 17 that at least one of the suspect transactions that comprise each count may have been a legitimate transaction.
>
> 3. In respect of count 7 the defendant was on holiday at the material time and could not have performed the alleged transactions.
>
> 4. A schedule of matters to be taken into consideration containing 23 further charges has been prepared. These Tic's are accepted. The total value of the Tic's is £6,651.57. The total value that Mrs Cousins will be admitting having stolen will therefore be £13,759.38.
>
> 5. It is proposed that the agreed figure of loss by the Post Office is £13,749.38. It is further proposed that this be the subject of a compensation order, and that in the circumstances it would be inappropriate to pursue formal confiscation proceedings.
>
> 6. These are matters of personal mitigation that relate to Ms Cousin's family circumstances. Mrs Cousins does not seek to

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> suggest that any person other than herself was responsible for the thefts."

380. On 5 May 2009, Mrs Cousins was re-arraigned on counts 2, 4, 6, 8, 9, and 11 to 16. The sentencing hearing was listed on 28 May 2009. The defence suggested in mitigation that Mrs Cousins stole the money to pay for her sick mother, who needed a wheelchair and a downstairs toilet, although in the subsequent mediation proceedings Mrs Cousins asserted that this mitigation was a lie. The total loss to POL was calculated as £13,759.38 following the basis of plea. Mrs Cousins had already made a voluntary contribution of £13,000 on 21 May 2009, and so compensation was ordered for the balance (£759.38). Mrs Cousins was also ordered to pay a contribution to prosecution costs of £2,000.

381. On Mrs Cousins' behalf, Mr Moloney frankly acknowledges that Mrs Cousins' appeal turns on whether Horizon-generated evidence was essential to the POL case against her: if it was, then, he submits that the appeal succeeds; if it was not, then, he accepts that the appeal must fail. Accordingly, whilst a number of other points were raised on Mrs Cousins' behalf which are independent of the Horizon issue, again as Mr Moloney concedes, it is unnecessary to explore those other points unless Mrs Cousins' case concerning the Horizon issue is accepted. Mr Moloney, indeed, accepts that the other points, which Miss Johnson for the prosecution characterises as being concerned with evidential sufficiency rather than anything to do with Horizon, are insufficient on their own to render Mrs Cousins' convictions unsafe.

382. These other points include, for example, the contention that there was no evidence that Mrs Cousins ever stole pouches in the first place since, so it was suggested, the overwhelming majority of the collection sheets show that Mrs Cousins' green pouches were collected by the Royal Mail. However, as explained, we need not take up time addressing these points and can focus instead on the central issue, namely whether Horizon evidence was essential to POL's case against Mrs Cousins. As to that issue, Mr Moloney's submission is straightforward. It is, in essence, this: that there was no evidence which safely pointed to how, or by whom, the reintroductions had been made; nor even, Mr Moloney suggests, whether reintroductions had, in fact, occurred. Mr Moloney submits in this context that the procedures for processing Pension and Allowance ('P&A') vouchers were fundamentally flawed.

383. Mr Moloney advances this submission aided by the evidence which we permitted to be given on a *de bene esse* basis by Mr Ian Henderson, a forensic accountant who gave evidence before Fraser J and 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: see the "Horizon Issues" judgment at [185]-[201]. Mr Moloney submits that, as he put it, "the reality of those procedural flaws" was borne out by the fact that reliance had to be placed by Ms Allen on identical sums being recorded on the Horizon system and those sums then being linked to individuals because of the sum involved. That, he submits, was the underlying rationale for a central aspect of the case against Mrs Cousins since there was nothing further to confirm that a sum had actually been introduced. The basis of the analysis undertaken by Ms Allen, Mr Moloney submits, has been fundamentally undermined by the discovery of examples of payments being established as being to a person other than the person assumed by POL.

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384. We are not persuaded by these submissions. We agree with Miss Johnson that it has not been demonstrated that Horizon reliability was essential to the case against Mrs Cousins. This is not a case involving a Horizon-generated shortfall which Mrs Cousins, as the SPM, had to make good. It is not a case, in simple terms, in which the amount of cash or stock held at the branch did not match what Horizon recorded should be present. The case against Mrs Cousins was as described in prosecution counsel's opening note, which we have quoted earlier. It was a case which was concerned not with any shortfalls in Mrs Cousins' accounts but with the discrepancies between the data Girobank received from Chesterfield showing how much money had been paid out for giros, on the one hand, and the number of pouches received, on the other. It was, as prosecution counsel put it, a case which was concerned with "missing pouches". The prosecution's case was that Mrs Cousins had committed the theft by making some overclaims ("a claim for a giro that never existed") and many reintroductions ("the reintroduction of a legitimately cashed giro"). This had nothing whatever to do with Horizon and everything to do with what was done, physically, with giros, specifically with regard to signatures and date-stamping and the evidence of customers as to their usual habits and how they would not, as Miss Johnson put it, store up giros and cash more than one at once.

385. Although, in his evidence, Mr Henderson expressed the belief that Horizon data was essential to Mrs Cousins' prosecution, based on the fact that Ms Allen was using data "derived from what is now accepted to be an unreliable computer system", this does not alter the fact that the case against Mrs Cousins did not depend on Horizon. Mr Henderson's criticism was, on analysis, as Miss Johnson submits, a criticism as to the design of Horizon, specifically the fact that Horizon did not allow individual customers to be identified. That, however, does not make this a case in which Horizon can be said to be essential to the case against Mrs Cousins. In any event, as Miss Johnson further points out, this was a deficiency which was known about at the time that Mrs Cousins was prosecuted; it is not something which has only later emerged.

386. It is right to acknowledge that Mr Henderson also floated the possibility that there was a phantom bug responsible for multiple giro entries. This was, however, little more than speculation based on the fact that Fraser J concluded that there were bugs in Horizon, including a phantom transaction bug. Indeed, when it was put to him in cross-examination by Miss Johnson that the phantom transaction bug identified by Fraser J had been fixed in 2001, all that Mr Henderson could say was that it should be borne in mind that bugs "can manifest themselves in many different ways" whilst accepting that what he was saying about a phantom transaction bug was, indeed, speculation. As he put it: "Who knows whether such bugs, errors and defects could have had the consequence that I have highlighted". Given Mr Henderson's acceptance that he was engaging in speculation, we feel quite unable to conclude that there was any such phantom transaction bug. However, even if there had been, what is clear is that it would have manifested itself at the time to Mrs Cousins. As she herself stated in interview, each Wednesday, after the branch closed at 5.30 pm, she reconciled the physical giros in her branch with what Horizon recorded as having been paid out. In view of this, she would have been bound to have become aware of any bug, not least because if a bug had led Horizon to record extra giro payments being made, there would have been a surplus in the cash till because Mrs Cousins would not have paid this money to a customer. Mrs Cousins did not describe this happening. Nor did Ms Allen find any evidence of a surplus.

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387. In conclusion, we agree with Miss Johnson when she submits that Mrs Cousins has tried to shoehorn this case into a Horizon matrix by arguing that Horizon capability was poor when the real question is not as to its capability but as to its reliability and, then, as to whether it can properly be said that that reliability was essential to the case which was brought against Mrs Cousins. This is not such a case. Nor, it follows, is it one of those exceptional and rare cases in which it would be appropriate to conclude that Mrs Cousins' conviction is unsafe on either of the abuse of process grounds which are advanced. Mr Moloney, we record, accepts that if we were to decide that this is not a category 1 abuse case, it would inevitably follow that nor is it a category 2 abuse case. Mrs Cousins' appeal must, therefore, be dismissed.

Stanley Fell

388. Mr Fell appeared before the Crown Court at Leicester on 27 July 2007 when he pleaded guilty to a single count of false accounting. He was sentenced to 50 weeks' imprisonment suspended for two years, with a requirement to participate in an Enhanced Thinking Skills Programme.

389. At the time that he was sentenced, Mr Fell was aged 54. He was the SPM at the Newton Burgoland Post Office in Coalville, Leicestershire from 13 September 1976 until the termination of his contract with POL on 22 June 2007, he having been suspended on 25 October 2006. The branch was a single-counter office within commercial retail premises (a village general store) also run by Mr Fell. He was, as his counsel, Mr Stein, points out, the third generation of his family to work and operate the Newton Burgoland Post Office. He was a highly regarded member of the local community.

390. Ms Jane Bailey, then a Business Development Manager employed by POL, provided two witness statements as part of the criminal proceedings, respectively dated 14 and 15 March 2007. In her first witness statement she described having attended the branch on 23 October 2006 due to concerns over the amount of cash in the branch and the amount of 'rems' (i.e., the amount of cash which Mr Fell had requested he be provided with by POL in order to service the cash needs of the branch) being requested. Ms Bailey spoke to Mr Fell and told him that she was there in order to check the cash, as it was not matching up with what the Horizon computer system was showing. She printed off an office snapshot which showed that the branch should have had £28,819.97 in cash. Mr Fell counted all of the notes and coins in front of her. It became clear that there was a large shortfall of cash. The actual cash present was only £9,420.67, leaving a shortfall amounting to £19,399.30. Ms Bailey asked Mr Fell if he could explain the shortfall. He said that he could not do so. Ms Bailey asked Mr Fell if he could think of a reason for the loss. He said that he could not, before adding this: "If I was to give you a cheque for the shortage, would that be the end of it?". Ms Bailey told him that an audit team would need to verify the discrepancy and the reason for it. Having ensured that the cash and stock was secured, she then left.

391. Two days later, on 25 October 2006, an audit was carried out at the post office by Branch Auditor Paul Field. Ms Bailey was present when the audit took place, along with Mr Fell's daughter and her boyfriend. Mr Fell was absent GRO Michael Rudkin of the National Federation of Sub-Postmasters was, however, in attendance. The cash and stock on hand were verified. A shortage of £19,583.04 was found. This was an overall total, taking account of a shortfall in cash figures in the sum of £19,587.66 but a surplus in stock figures in the sum of £4.62.

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392. The next day, 26 October 2006, Ms Bailey returned because Mr Fell's wife had signed for a pouch that had contained the Christmas stock which had been sent there. Ms Bailey locked the unopened pouch in the safe. Mr Fell was present in his shop and invited Ms Bailey into his dining room adjoining the shop to speak. During the conversation, Mr Fell said to her that he had been very stupid, and he had not intended to take money from the post office, but circumstances had led him to do it. It appears also that Ms Bailey was told by Mr Fell on 26 October 2006 that he had "not taken any more money for quite a while". Mr Fell was at pains to make Ms Bailey understand that it was not in his nature to do something like this, and he said that he had run the post office for many years. Several times, he told her that it had been a foolish thing to do. He also told her that he thought that he would have been found out a while back but that a person who had visited him then had not checked the cash against the balance snapshot as she had done.

393. On 1 November 2006, Ms Bailey spoke to Mr Fell on the telephone to discuss arrangements for an interim SPM. During the conversation, Mr Fell said that he was concerned that he might be sent to prison. Ms Bailey visited the branch that same day. She told Mr Fell that her colleague, Mr Paul Williams, would deal with the question of his contract and that anything else would be dealt with by the POL investigation team. Ms Bailey told Mr Fell that she did not know what would happen to him. He told her that it was a stupid thing that he had done and that he should have known better.

394. A week or so later, in a letter dated 8 November 2006, Mr Fell was notified that POL wished to interview him. That interview took place on 30 November 2006 and was conducted by Mr Jonathan Longman, a POL investigation manager, who had in advance obtained the transaction log CD, which showed all the Horizon transactions for the period from 27 September 2006 to 25 October 2006.

395. The interview took place under caution with Mr Rudkin also in attendance but no lawyer acting for Mr Fell because he had waived his right to be represented by a lawyer. Mr Fell read a prepared statement, in which he denied theft and said that he always intended to repay monies but in which he did accept what he called "financial negligence". More particularly, the statement was in these terms:

> "May I state from the outset without prejudice that at no time have I sort [sic] to steal or defraud POL of any Stock or cash whilst in my custody. POL appointed me in 1976 as the Sub-Postmaster of Newton Burgoland Post Office and until my suspension on the 23rd October 2006 I was the Sub-Postmaster of Newton Burgoland Post Office where I have carried out the duties of a Sub-Postmaster and run the village store for 30 years.
>
> On the 23rd October 2006, Jane Bailey (Community Business Development Manager) for POL entered the premises of Newton Burgoland Post Office to investigate a complaint that I (Stanley Fell) had made to POL's cash management centre about the lack of funds I had at my disposal to finance the running of Newton Burgoland Post Office.
>
> Jane Bailey representing POL, having examined the Post Office cash identified there was a shortage of £19,587.66.

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I was with immediate effect suspended from my duties as Sub-Postmaster of Newton Burgoland Post Office. However I have been allowed to carry on trading at the same premises with my village store.

On the 24th and the 25th October 2006 I had to seek medical attention due to the stress and anxiety of being suspended. My doctor prescribed anti depressants along with sleeping tablets to assist me.

On the 25th October 2006 upon my return to Newton Burgoland Post Office having needed further medical attention from my doctor I was informed by my daughter who I left in charge of the store that during my absence Jane Bailey (BDM) and Paul Field (POL Audits) had entered the Post Office secured area and proceeded with an audit of my Post Office accounts during my absence, despite my daughter's requests to suspend an audit until I Stanley Fell had returned from the Doctors.

My federation representative Michael Rudkin has subsequently informed me that he was present throughout the audit. Michael has confirmed to me upon completion of the audit by Paul Field the Post Office accounts for Newton Burgoland Post Office revealed a cash shortage of £19,587.66.

The burden of my actions became so unbearable that on the 11th November 2006 I planned to end my life by taking an overdose of paracetamol tablets and alcohol that lay in waiting for me in the garden shed. The failure that I feel I have become, I was discovered by members of my immediate family and stopped from attempting suicide.

GRO

Should you require any further information I would ask the Post Office Investigation Department to write to either myself or my Solicitors Richard Nelson outlining your requirements and I will co-operate fully with the investigation.

I wish to offer POL and my Family an un-reserved apology for my financial negligence but wish to reaffirm without prejudice that at no time have I sort [sic] to steal or defraud POL of any Stock or cash whilst in my custody and it has always been my intension [sic] to repay the money to POL.

Having consulted with my solicitors Richard Nelson Business Defence, I have been advised to co-operate as fully as possible in this voluntary interview with the Post Office Investigation Department.

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> I have decided to read my prepared statement as the prescribed medication that I am taking may interfere and not allow me to give clear and coherent answers when questioned.
>
> This concludes my statement. Should any further questions be put to me they will be met with the response NO COMMENT."

Mr Fell was, then, asked about the comments he had made to Jane Bailey. Consistent with what he said he would do, he answered 'no comment' to each of these questions.

396. Mr Fell was subsequently indicted with a single count of theft, the particulars being that on a day unknown between 1 June 2006 and 24 October 2006 he stole £19,583.04 belonging to POL. On 11 May 2007, Mr Fell was committed for trial on this charge, POL having assembled witness statement evidence not only from Ms Bailey concerning her visits to Mr Fell's post office in October 2006 but a further witness statement from her in which she set out a general explanation of the Horizon computer system. There was also a witness statement from Penelope Thomas of Fujitsu, which made reference to the Horizon transactions for the period from 27 September 2006 to 25 October 2006 which Mr Longman had obtained ahead of the interview and which set out the way in which the Horizon system stored information and providing evidence of the integrity of the system. She confirmed that the Horizon system was installed at the branch on 16 February 2001. She produced an ARQ, which she had received from POL investigators on 8 November 2006. The ARQ requested a report of all transactions and events for the post office branch within the date range 27 September 2006 to 25 October 2006. Ms Thomas undertook extractions of data held on the Horizon system in accordance with the requirements of the ARQ and produced the resultant CD, which she forwarded to the POL investigation section.

397. There was also a witness statement from Mr Longman, who had also received a number of cash declarations from Mr Field, the auditor who had carried out the audit of the branch on 25 October 2006. He used the transaction log and some of the cash declarations to examine the cash flow within the post office to see whether he could verify if any of the cash declarations made by Mr Fell were correct. The first he examined was printed by user SFE001 at 18.28 hours on Saturday 21 October 2006. The cash declaration purported to show that the post office had £18,107.35 in cash. Mr Longman interrogated Horizon for Monday 23 October 2006 and produced a schedule in which all the transactions involving cash in and out were added or subtracted from the £18,107.35, up to the point where Ms Bailey closed the office on 23 October 2006. The schedule showed that, if the cash declaration figure for Saturday 21 October 2006 had been correct, then, the cash on hand figure when Ms Bailey closed the office should have been £19,770.85. Only £9,276.99 in cash was, however, in fact, on hand. There was, therefore, a discrepancy of £10,493.86. This proved, Mr Longman suggested, that Mr Fell's cash declaration for Saturday 21 October 2006 had been false.

398. Mr Longman prepared another example, this time using the cash declaration for 28 September 2006 as the cash balance brought forward, printed by user SFE001 at 18.04 hours on 28 September 2006, and which purported to show that the office cash holding was £25,475.13. The cash in and out of the post office for 29 September 2006 was scheduled but it did not tally with the cash declaration for 29 September 2006, printed by user SFE001 at 18.22 hours. A discrepancy of £13,256.93 was found.

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399. Mr Longman also prepared two further examples, the details of which we need not address.

400. Mr Longman's evidence was, in effect, that none of the cash declarations made by Mr Fell which he examined were a true account of what had been physically on hand at the post office, based on what the Horizon system disclosed should have been present. In each case, there was a substantial shortfall of cash.

401. After the hearing on 11 May 2007, a defence statement was served on Mr Fell's behalf on 7 June 2007. In this, Mr Fell denied theft on the basis he had no intention of permanently depriving POL of the sum of £19,583.04. The document went on to say this:

> "That he [Mr Fell] used the Post Office monies to keep the adjoining shop afloat having suffered a decline in the trade of the Post Office and having mismanaged the stocking of the shop resulting in financial difficulties in meeting the overheads of the business.
>
> He always intended to repay the monies."

402. At the same time, Mr Fell made a request for disclosure of four items from the schedule of non-sensitive unused material. Disclosure of this material was given under cover of a letter dated 19 June 2007 addressed to Mr Fell's solicitors.

403. On 29 June 2007, a plea and case management hearing took place before HHJ Lea. Prior to this, there were discussions between prosecution and defence counsel during which the prosecution told the defence that, if Mr Fell repaid the outstanding monies, then the prosecution would substitute an alternative charge of false accounting in place of the charge of theft. Mr Fell was, therefore, not arraigned. A pre-sentence report was ordered on the basis of an expected plea of guilty to false accounting. The case was adjourned to 27 July 2007.

404. Following this hearing, a second indictment was produced, which alleged a single offence of false accounting, the particulars being that, on dates between 1 June 2006 and 24 October 2006, dishonestly and with a view to gain for himself, Mr Fell had falsified accounts required for an accounting purpose, namely the Horizon system cash declaration statements and trading statements for the post office, by making entries on those accounts purporting to show that the cash in hand held at the post office was greater than it actually was. This was the indictment which was before the court at the hearing on 27 July 2007.

405. Also before the court on that occasion was a written basis of plea dated 27 July 2007 and signed by Mr Fell, Peter Hampton (his counsel) and Charlotte Knight (his solicitor). This stated as follows:

> "I, Stanley Fell (b. 09.02.1952) am currently charged with a single offence of False Accounting [01.06.06 – 24.10.06]. I will plead guilty to this offence on the following basis:

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> Towards the end of 2004 / the beginning of 2005 I entered into a contract with a wholesaler by the name of '1st Choice Ltd'. '1st Choice Ltd' were to supply the stock to my shop which is contained within the Post Office premises. In entering into such an agreement, I hoped to turn around the poor sales that the shop had experienced in the recent past.
>
> Initially, the new contract led to a modest improvement but this trend quickly reversed due to one particular term in the contract which stipulated that I must spend a minimum of £2,000 on stock every week.
>
> It soon became obvious that I simply did not have the finances to meet the stipulated term and I began to borrow Post Office funds in order to meet the shortfall and keep the shop afloat. This took place over the [sic] roughly the same period as set out in the charge and I admit that I acted dishonestly in falsifying the Monthly Trading Statements.
>
> I would wish to confirm to the Court that at no time did I intend to permanently deprive the Post Office of the monies in question. It was always my intention to pay back that which I had borrowed, as I now have. I did not intend to steal the money."

It was on this basis that Mr Fell was sentenced in the manner which we have previously described.

406. In support of Mr Fell's appeal, Mr Stein relies upon the fact that on 26 March 2020 the CCRC referred Mr Fell's case to the Court of Appeal on the basis that "unexplained losses were an important part of the context of this applicant's admission that he took Post Office money, and therefore the High Court's [Fraser J's] finding that there was a significant and material risk of bugs, defects or errors in Horizon causing branch shortfalls is of clear relevance to this case". It was Mr Stein's submission that, Mr Fell having pleaded guilty at a time when the extensive nature of the concerns about the Horizon operation system had not yet come to light, his is a case in which the plea of guilty operates as no bar to a successful appeal. He highlighted in this respect how in her witness statement Penelope Thomas described the system as operating properly. He submits that Mr Fell was prosecuted, and required to decide how to plead, in circumstances where, as Mr Stein characterises it, due to POL's corporate attitude of placing the protection of Horizon above the reputation of people such as Mr Fell, his legal team had incomplete and, indeed, misleading information about the reliability of Horizon.

407. Mr Stein points out, in particular, that Mr Fell had to rely on others to assist him as he found operating the system difficult. Before the audit leading to his prosecution, indeed, Mr Fell had made up for "discrepancies" on four occasions between 2005 and 2006. This is what he told Second Sight when interviewed for the purposes of the Post Office Mediation Scheme (see the report dated 5 December 2014 at paragraph 2.2). There is no evidence, Mr Stein submits, that POL disclosed to Mr Fell's then legal team that he had been putting money into the system in order presumably, so Mr Stein suggests, to make it balance. This, Mr Stein points out, in circumstances where, during

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the period leading to Mr Fell's prosecution, he made 721 calls to the helpline. Mr Stein submits that this is behaviour which suggested that Mr Fell was struggling with operating the system, not that he was engaged in criminal conduct.

408. Mr Stein submits that, all in all, Mr Fell can be forgiven for not knowing that if he had told his legal team about the discrepancies and that the system had thrown his accounting out of balance, they could have used that to support applications for disclosure and gone on to consider further legal arguments such as an application to stay, the exclusion of computer evidence or to support a defence that he was not acting dishonestly. Mr Stein submits that, had Horizon's failings been known to Mr Fell, he would have not taken "such a fatalistic approach" as he did on 23 October 2006 when talking to Ms Bailey or in interview or when facing the subsequent criminal proceedings, and he might have raised the concerns and issues that he had with the Horizon system. Mr Fell's "fatalism" could, Mr Stein suggests, have been countered by his union representative and his legal team if they had been informed by POL of Horizon's bugs, errors and defects. The denial of information about the Horizon system, Mr Stein submits, failed to allow Mr Fell's legal team the opportunity to fully and properly advise him as to his options, what disclosure might be requested and why that might assist his case or undermine the prosecution case.

409. We do not agree with Mr Stein about this. We remind ourselves, in the first place, that, as made clear by Rix LJ in *Kelly and Connolly*, it will be an exceptional and rare case where an unequivocal and intentional plea of guilty will be overturned. This is because, as Potter LJ put it in *Bhatti* at [30] (as cited by Rix LJ in *Kelly and Connolly* at [118]), a plea of guilty "represents a voluntary recognition of guilt". Secondly, and critically in this case, we are not persuaded that this is an exceptional and rare case since we agree with Mr Altman that this was not a case which was concerned with Horizon, more specifically its reliability. As such, we do not accept that Mr Stein can be right when he submits that there was an obligation to disclose material going to Horizon reliability. It follows that Mr Fell's guilty plea cannot be said to have been undermined by what has subsequently emerged concerning Horizon. It further follows, therefore, that Mr Fell's conviction cannot be regarded as being unsafe.

410. Specifically, as Mr Altman submits, although Mr Stein seeks to rely upon the CCRC having described Mr Fell as having "explained that he had been using the shop income to pay unexplained Horizon losses which were occurring, and then had taken money back when he couldn't cover the shop bills", that was not something which he ever suggested at any time before he came to be sentenced. It is not what he told Ms Bailey; nor is it what he told Mr Longman in interview; nor is what he put in his defence statement; and nor is it what was stated in his written basis of plea. The latter confirmed, indeed, that he had "borrowed" the money from POL in order to prop up his retail business, having entered into a contract with a supplier (1st Choice Ltd) to stock his shop with a minimum spend of £2,000 every week. He stated, in terms, that he "did not have the finances to meet the stipulated term" and so he "began to borrow Post Office funds in order to meet the shortfall and keep the shop afloat". Again as stated in the written basis of plea, "This took place over roughly the same period as set out in the charge [i.e., 1.6.06 – 24.10.06]".

411. In short, Mr Fell never suggested that what he did had been done in order to cover up a Horizon-generated shortfall as opposed to one created by his own actions in taking money to prop up his retail business. Nor did he ever suggest, including in his written

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basis of plea, that he had borrowed money from POL to repay what he had made good in the past. What he told Second Sight some years later in the course of the mediation process was not what he was saying at the time that the investigation was being conducted and at the time that he was prosecuted. As Mr Altman submits, that includes the suggestion made by Mr Fell to Second Sight that he informed POL of shortages on several occasions. He had previously made no mention of having told POL this.

412. Matters do not stop there, however, since, as already observed, far from putting forward Horizon-related explanations, Mr Fell made a series of comments during the course of the investigation which entailed his express acceptance of wrongdoing. Thus, at the time of the audit he admitted to having taken the money and stated that he had not intended to, but circumstances had led him to do it. He, then, denied theft in the prepared statement which he produced at the time of his interview, in which he referred to "the burden of my actions" and his "financial negligence", apologised and stated that he did not steal because "it has always been my intention to repay the money to the Post Office". His position, in essence, was that, although he admitted taking the money, there was a lack of intention permanently to deprive. He repeated this in his defence statement, going on to explain that "he used the Post Office monies to keep the adjoining shop afloat having suffered a decline in the trade of the Post Office and having mismanaged the stocking of the shop resulting in financial difficulties in meeting the overheads of the business". As Mr Altman submits, there was no word about having to make good shortages in the past as his reason for borrowing the funds and covering it up by fraudulent accounting.

413. It is clear, furthermore, although hardly surprising in the circumstances, that in his solicitor's letter to him dated 6 July 2007, which was disclosed as part of the Second Sight mediation process, reference is made to there having been a full conference at court at the PCMH on 29 June 2007 with counsel, the solicitor and Mr Rudkin and to Mr Fell having been given full advice regarding his plea. That letter states: "You have always accepted that you were guilty of false accounting by way of creating false cash records to disguise the monetary loss to the Post Office caused as a result of you taking funds to keep your shop afloat". There was clearly no suggestion on Mr Fell's part that Horizon was responsible for any shortfall. On the contrary, he was putting forward a positive reason for what had happened which did not involve any suggestion that it was Horizon-related.

414. Furthermore, although Mr Stein seeks to rely upon the CCRC's reference to Mr Fell having "on four occasions between late 2005 and October 2006 … made good defaults generated by Horizon", as the final Second Sight report of 5 December 2014 made clear, these totalled just £1,110.87 and so very much less than the £19,583 which appeared in the indictment to which Mr Fell pleaded guilty. It follows that the four discrepancies he made good during that period cannot explain the scale of the losses with which this appeal is concerned. Although Mr Stein submits that there is no evidence that POL disclosed the fact that Mr Fell had made these payments, we agree with Mr Altman that this is not a matter for criticism in this case given that Mr Fell himself knew that he had made those payments. Indeed, if anything, as Mr Altman submits, the fact that Mr Fell did not tell his legal team is consistent with recognition by him that those four incidents had nothing to do with why he took the money. His case, we repeat, was that the reason why he did what he did was to fund his shop having made a bad stock supply arrangement.

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415. We conclude, in the circumstances, that this is not a case in which Horizon can properly be regarded as having been essential to the case which POL brought against Mr Fell. It follows that his is not one of those exceptional and rare cases in which it would be appropriate to conclude that his conviction is unsafe on either of the abuse of process grounds which are advanced. We should add in this context that we reject Mr Stein's submission that, were we to decide that this is not a category 1 abuse case, we could nonetheless decide that it is a category 2 abuse case. We see no basis on which it would be appropriate so to decide, as Mr Moloney correctly concedes in Mrs Cousins' case. Mr Fell's appeal must, therefore, also be dismissed.

Neelam Hussain

416. Neelam Hussain appeared before the Crown Court at Wolverhampton on 20 June 2011 when, on the day of trial, she pleaded guilty to theft. An allegation of money laundering was ordered to lie on the file. Aged 20 at the time of conviction, she was sentenced to 21 months' detention in a young offender institution. Subsequently, on 9 March 2012, she was ordered to pay confiscation in the sum of £78,922.75. A compensation order was made in the same amount, to be paid out of the confiscation. Having served her original sentence, she then served a further 9 months in custody as she had not met the confiscation order.

417. Ms Neelam had worked at various post offices as a counter clerk since 2005. She was appointed the manager at the West Bromwich Post Office in March 2008. Her brother, Shamhir Hussain, was employed as a clerk at the branch during the period covered by the indictment which she came to face. The SPM at the branch was Mrs Baljinder Dhadda.

418. An audit of the branch on 13 November 2009 revealed a shortfall of £101,617.15, £93,159.18 of which was suspected to be missing cash. The shortfall came to light when the auditors noticed discrepancies in the branch accounts. The largest of these discrepancies related to a stock unit named "GG", which was alleged to be a phantom stock unit created and used by Ms Hussain to conceal the fact that cash was missing.

419. Horizon records indicated that sums totalling £83,000 had been transferred to stock unit GG over the course of three weeks between 16 October 2009 and 5 November 2009. There were five separate payments, appearing in the records as internal transfers made to GG from two other accounting stock units within the branch named "BB" and "BC". None of the sums credited to the GG stock unit by way of these five transfers were recorded as having been accepted by it. The effect was that £83,000 cash was alleged to be missing because the money appeared to have left one part of the branch accounts without ever being recorded as having been received back in.

420. According to Horizon records, four of the five suspicious payments to the GG stock unit had been made by someone using an electronic staff identification ("ID") code attributed to Ms Hussain. A staff ID code consists of three letters followed by three numbers. Often the three letters will be the first letter of the staff member's given name followed by the first two letters of that person's surname. Each staff member should only access the system under their own user ID code, using a private password. If a transaction is made under a particular user ID code, the Horizon records provide the relevant details, including the time and date of the transaction, the user ID and the value of the transaction. The Horizon records also showed when and by which user ID code

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certain stock units had been created. The Horizon evidence indicated that on 16 October 2009 the GG stock unit at West Bromwich had been created by someone using an electronic ID user code attributed to Ms Hussain.

421. The five payments to stock unit GG comprised two transfers from BB to GG for a combined total of £74,000 and three payments to GG from BC to a total value of £9,000. The transfers into stock unit GG had not been accepted by that stock unit until the auditors made the necessary adjustments themselves on 13 November 2009. The five suspicious transfers recorded as having been made to stock unit GG were: (i) £25,500 on 16 October 2009 at 08.36 hours from BB to GG by user ID NHU004; (ii) £48,500 on 17 October 2009 at 14.13 hours from BB to GG by user ID RMA002; (iii) £6,000 on 20 October 2009 at 15.38 hours from BC to GG by user NHU004; (iv) £1,500 on 29 October 2009 at 17.26 hours from BC to GG by user ID NHU004; and (v) £1,500 on 5 November at 16.21 hours from BC to GG by user NHU005.

422. Records from Horizon showed that the stock unit with the code GG had been created using an electronic identification user code NHU004 attributed to Ms Hussain at 08.35 hours on 16 October 2009. That was the same user ID recorded as having made transfers (i), (iii) and (iv). NHU004 was an ID code allocated to Ms Hussain. The user ID code NHU005, which was used to make the final transfer of £1,500 to GG on 5 November 2009, was also a user ID code used by Ms Hussain.

423. The other user ID connected to one of the five suspicious transfers was RMA002. This user ID code was used by another member of staff. That other member of staff said that she did not make the transfer of £48,500 on 17 October 2009 to stock unit GG. She said that she had never used, or even knew about, the stock unit until Mrs Dhadda told her about this aspect of the audit's findings. She telephoned Ms Hussain in December 2009 to confront her about the use of her user ID (RMA002). When challenged about it, Ms Hussain admitted responsibility for making the transaction on 17 October using that ID code, telling her that she had done so because she had lost a cheque and, if she had not transferred the funds, there would have been a shortage on the accounts.

424. Whilst the auditors were still at the branch on the morning of 13 November 2009, Ms Hussain went into the nearby Netto supermarket, where she tried first to obtain cash and then a cheque from the store manager. He did not provide cash or give her a cheque. She appeared distressed, telling him that she had mislaid a cheque from the previous day's banking and that she wanted a cheque to keep in the office to cover for the cheque she had lost. Ms Hussain, then, asked somebody else, a warehouse operative, whether he had a cheque book on him. When he said he had not, she asked him if he could go home and get one.

425. Shortly afterwards, Ms Hussain returned to the branch where she snatched a cheque book from one of her colleagues. That colleague's cheque book was in her husband's name. Ms Hussain used a cheque from this cheque book to write out a cheque for £85,000 in favour of POL, signing it in the name of the colleague's husband. She told her colleague that a customer had come in to purchase an £85,000 growth bond but that she had been unable to put the cheque in the Horizon system as she had lost the cheque. Ms Hussain offered her £5,000 to keep quiet about the cheque. The cheque written out by Ms Hussain and made payable to "PO Ltd" was later found during the audit. The cheque was dated 2 August 2009. Attached to it was a piece of paper on which was

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written "chq to put in system - growth bond" and "To put in system - sent application - growth bond".

426. At the time of the audit, Mr Longman, one of the investigators who was similarly involved in Mr Fell's case, was alerted by another of his colleagues who was checking recent transactions at the branch to a transaction for a growth bond which had been issued on 6 October 2009 for £50,036.82. The transaction had been made by someone using the ID code NHU004 and was shown to have been settled to cash. Mr Longman subsequently made contact with the purchaser of the bond, a woman in her eighties, who explained to him that on 13 August 2009 she withdrew £50,036.82 by cheque from her West Bromwich Building Society Account made payable to her and went directly to West Bromwich post office, having already completed a growth bond application. She told Mr Longman that she had been served by the manageress of the post office (Ms Hussain), who advised her that there was an error in her application form for the growth bond and so the manageress completed a new application form on her behalf. Although she had left the branch with a receipt for the growth bond, she had still not received her growth bond some weeks later. The customer, therefore, made inquiries with the Post Office helpline. They referred her to the Bank of Ireland, the bank operating the growth bond scheme. The Bank of Ireland representative told her that there was no record of any growth bond transaction in her name. Mrs Green knew that the cheque which she had cashed had been debited from her account on 16 August 2009. She decided to confront Ms Hussain and did so on 6 October 2009. She also arranged for the Bank of Ireland representative to telephone the post office to speak to the manageress during her visit so that he could help her via the telephone whilst she was there.

427. A recording of the call which took place between the manageress of the branch and the Bank of Ireland representative was obtained and a transcript produced. This confirmed that the customer had visited the post office on 6 October and that a person identified as Ms Hussain spoke to both her and the Bank of Ireland representative about the transaction. During the call, Ms Hussain gave the impression that she had dealt personally with the growth bond transaction. She told the Bank of Ireland representative that she remembered the transaction in question, that the customer had made a mistake and so she "filled in the form for the lady and processed it and gave her a receipt". She explained that she had reversed the application after the customer had left the branch as no appropriate identification details had been entered on to the application document. However, she said that another staff member had processed the customer's cheque which had been sent off. She explained that "it made my till go up £50,000". She explained that the money had been kept in the safe with the application form for the growth bond. She agreed to complete the transaction and to give the customer £70 from POL to compensate for any loss of interest resulting from the failure to process the bond transaction at an earlier stage.

428. Mr Longman also obtained earlier transaction records from the Horizon system in relation to the growth bond sold to the customer. These records, which were obtained from Fujitsu, indicated that, on 13 August 2009 at 13.09 hours, a growth bond was entered on the system by a person using the ID code NAY001. The same user ID was used to settle the transaction to cash at 15.36 hours. It should have been settled to cheque as this is how Mrs Green paid for the bond. The transaction was reversed by user ID NAY001 at 15.37 hours, effectively cancelling the transaction. The user ID

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code NAY001 was attributed to Nayla Hussain, Ms Hussain's sister, who also worked at the post office but who was not a suspect in the subsequent investigation. The Horizon records exhibited indicated that at 10.16 hours on 14 August 2009 a cheque for £50,036.82 was entered into Horizon by user ID NHU004 and that cash to the same value was shown as having been being paid out. The transaction log data showed that user ID NHU004 entered a growth bond transaction on to Horizon for £50,036.82 at 14.44 hours on 6 October 2009 and settled it to cash.

429. Mr Longman examined the branch trading accounts for the period 15 July to 19 August 2009. In doing so, he saw that there was no surplus which would have been expected had there been an additional £50,036.82 in cash at the branch for any innocent reason. Mr Longman's conclusion from his analysis of the Horizon evidence was that the customer's growth bond had, in effect, been cashed by user ID NHU004 on 14 August 2009.

430. According to her work colleague, Ms Hussain had previously asked her to bring a cheque book to the branch on two different occasions in early October, first on 6 October and then on 13 October 2009. On each occasion, Ms Hussain wrote out a cheque from the work colleague's husband's cheque book for £8,000, saying that she would pay £8,000 in cash to the colleague to enable the cheque to be met. The first cheque written out on 6 October 2009 was made payable to "Wilding and Co. Solicitors". Ms Hussain telephoned her colleague about a week later to say that she had made an error on the cheque and asking her to bring her cheque book into the post office again, which she did on 13 October 2009. Ms Hussain told her that her brother, Shamhir, was purchasing a house and that somebody might query where he had got the money from. On 13 October 2009, Ms Hussain returned the first cheque to her colleague and wrote out a second cheque for £8,000, again signed by her in the name of the colleague's husband. This cheque was made payable to Shamhir Hussain. The colleague subsequently received a letter from her bank dated 16 October 2009 returning the cheque marked "refer to drawer" and explaining that the cheque could not be honoured due to there being insufficient funds.

431. Ms Hussain was in the process of buying the leasehold of the branch for £175,000 from the postmistress, Mrs Dhadda. According to Mrs Dhadda, this purchase had been planned to be completed on 20 October 2009 but had been delayed because a cheque for £1,437.50 provided by Ms Hussain to Mrs Dhadda's solicitors had bounced.

432. Banking evidence provided by Lloyds TSB showed that cash deposits of £8,500 on 20 October 2009 and of £1,500 on 30 October 2009 were made into the brother's bank account. The banking evidence also demonstrated that a deposit of £8,000 made into the account on 14 October 2009 was shown in the account on 19 October 2009 as an "unpaid cheque". This was the deposit of a cheque signed in the name of BS Hayer. A sum of £8,565.46 was paid to 'Wildings Solicitors' on 20 October 2009, who it appears were acting for Shamhir Hussain in his prospective property purchase.

433. Ms Hussain was arrested on 13 November 2009. Her brother was arrested on suspicion of theft on 12 May 2010. In her first interview under caution on 13 November 2009, held in the presence of her solicitor, Ms Hussain made no comment except when answering a small number of introductory questions. In her second interview under caution on 18 December 2009, also in the presence of her solicitor, she provided a prepared statement denying any wrongdoing, suggesting that her colleague (the person

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whose husband's cheque book had been used by Ms Hussain) may have been responsible for the money which was said to be missing and explaining that it was common practice for staff members to use other people's username and password. She said that all her dealings with growth bond transactions were legitimate. She then declined to answer further questions.

434. Ms Hussain was charged on indictment (count 1) with theft of £101,617.15 belonging to POL between 1 July 2009 and 13 November 2009, although this count was later amended to reflect the £83,000 linked to stock unit GG before she pleaded guilty. She was also indicted with money laundering (count 3) in respect of £1,500 paid into her brother's bank account on 30 October 2009. Her brother, Shamhir Hussain, was charged and indicted with money laundering in respect of £8,500 (count 2).

435. In her defence statement, Ms Hussain denied theft and dishonesty. She denied, in particular, responsibility for creating stock unit GG and for making any of the transfers to stock unit GG. She denied using the other staff member's user ID to make a transfer or telling her that she had made the transfer. She said that other staff members had access to both her user IDs and would use them. She maintained that any deficits might be due to accounting errors or losses or thefts by other counter staff. She explained that her monthly trading statements did not reveal any errors or losses; counter staff could overstate the cash being held in their till or safe when providing a balance and cover up their theft. Since the monthly trading statements did not require physical checks to be made of the cash held in tills or safes, she took the balances on trust and failed to pick up errors or thefts by others. She said that she was in the process of buying the business from Mrs Dhadda and suggested that she had been set up by others who did not want her to buy the branch. She denied giving her brother £1,500 or that the sum was the proceeds of crime committed by her.

436. On 18 October 2010, Ms Hussain and her brother made their first appearance at West Bromwich Magistrates' Court. The case was sent to Wolverhampton Crown Court. At the Plea and Case Management Hearing at Wolverhampton Crown Court held on 23 December 2010, they were arraigned and entered not guilty pleas. The case was listed for trial on 20 June 2011. At a mention hearing on 28 January 2011, the defence indicated that all prosecution witnesses were required to give evidence. On 20 June 2011, the day of trial, Ms Hussain pleaded guilty to count 1, which had been amended to allege theft of £83,000 from POL. Count 3 was ordered to lie on the file. No evidence was offered against Shamhir Hussain on Count 2. Sentencing was adjourned until 6 September 2011.

437. On 6 September 2011, at Derby Crown Court before by HHJ Waite QC, Ms Hussain was sentenced to 21 months' imprisonment. A POL memorandum dated 12 September 2011 indicates that the judge rejected the defendant's assertion that she had only taken the money in order to fund treatment for her mother in Pakistan but accepted that she was under pressure from her family and that she did not receive the full benefit of the money stolen.

438. On Ms Hussain's behalf, Mr Millington submits that hers is a case where POL failed to comply with its disclosure obligations in not revealing the problems which were being encountered with Horizon in circumstances where Ms Hussain had stated in her defence statement, at paragraph 1.5, that "any deficits maybe due to accounting errors …". Mr Millington submits that Ms Hussain was thereby putting POL on notice that there was

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an issue regarding the accuracy and reliability of the Horizon data used in her prosecution.

439. Mr Millington submits that Ms Hussain's was as much a case for which Horizon was essential as others. He highlighted in this respect how Penelope Thomas from Fujitsu had made a witness statement in Ms Hussain's case in which she stated, in essentially standard terms, as follows:

> "To the best of my knowledge and belief at all material times the system was operating properly, or if not, any respect in which it was not operating properly or was out of operation was not such as to effect [sic] the information held within it."

Mr Millington submits that, in such circumstances, it is fanciful to suggest that Ms Hussain's was not also a "Horizon case". He observes in this connection that, had Ms Hussain maintained her not guilty plea, then Penelope Thomas would have given evidence and that, in any event, her witness statement essentially guaranteed the reliability of Horizon data. His submission is that POL, in effect, made Ms Hussain's case a "Horizon case" by choosing to serve this witness statement. Accordingly, he submitted that, in the circumstances, it was not possible for Ms Hussain to have received a fair trial because a legitimate line of defence had been unfairly and improperly closed to her, notwithstanding her having raised accounting error as a possible explanation for what happened. Mr Millington submits, as a result, Ms Hussain was unable properly to advance the defence which she had raised and was driven instead to plead guilty when that ought not to have been the case.

440. We cannot accept these submissions. We agree with Mr Altman that there was a strong and compelling circumstantial case of theft against Ms Hussain and, more importantly still for present purposes, that there is not in her case the abuse of process which POL has conceded in other cases because this was not a case in which the reliability of Horizon was essential. This is, therefore, neither a category 1 nor a category 2 abuse of process case.

441. The position is not changed by the fact that POL served a witness statement from Penelope Thomas saying what it did. It is, in particular, not changed by the fact that in that witness statement reference was made to ARQ data which had been requested on Ms Hussain's behalf since that does not make it a case in which the reliability of Horizon data was essential to the case which POL brought against her. What was essential was the fact that, as Ms Hussain now accepted but which she disputed in her defence statement, it was she who created the GG stock unit and it was she who made all 5 transfers. That is what the Horizon record showed, and it was what she (now at least and anyway by her guilty plea) accepted having done: that the GG stock unit was created on 16 October 2009 by her using her user ID NHU004, and that the transfers were made in the space of three weeks between the middle of October and early November 2009, the first transfer being on 16 October 2009 itself.

442. Indeed, as Mr Altman observes, whatever was meant by Ms Hussain in paragraph 1.5 of her defence statement concerning deficits being "due to accounting errors", including if it amounted to an assertion that Ms Hussain did not accept what the Horizon record showed, that is clearly no longer Ms Hussain's position in view of the admissions which she now makes as regards her creation of the GG stock unit and her being responsible

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for the transfers which, on her own case, cannot constitute accounting errors. It follows from this that there cannot conceivably be the abuse of process which has been suggested because the failure of disclosure of the full and accurate position on Horizon was not material where the reliability of Horizon data was not essential in the context of the evidence in the case. Put differently, there can have been no failure of disclosure concerning Horizon because Ms Hussain accepted (and accepted by her guilty plea) that she did, after all, create the GG stock unit and make the relevant transfers. The Horizon records were, in fact and as a result, reliable.

443. This is sufficient to dispose of this appeal. However, it is worth having in mind other aspects which we consider underline the lack of merit of Ms Hussain's appeal, indeed, which point strongly towards Ms Hussain having created a sophisticated scheme to take money from the branch where she was working and which she was in the process of buying at the same time as her brother was trying himself to buy a property. We propose, in the circumstances and since we have already set out the background in some detail, to address these matters only briefly. However, it is significant that, during the audit on 13 November 2009, Ms Hussain sought to explain the shortfall by saying that she had lost a cheque, not that she had suffered any Horizon-generated loss. It was for this reason that she wrote a cheque on a work colleague's cheque book for £85,000, having told the colleague that a customer had come in to purchase an £85,000 growth bond but she had been unable to put the customer's cheque through as she had lost a cheque. That cheque was later found during the audit. It was dated 2 August 2009 (apparently corrected from September) and, as we have previously noted, attached to it was a piece of paper on which was written "chq to put in system - growth bond" and "To put in system - sent application - growth bond". Later, in December 2009, Ms Hussain admitted to a colleague responsibility for making the second transfer on 17 October 2009 using her RMA002 user ID, telling her she had done so because she had lost a cheque and if she had not transferred the funds, there would have been a shortage in the accounts. As Mr Altman puts it, this was, therefore, not an unexplained but an explained shortfall.

444. Furthermore, the suggestion made on Ms Hussain's behalf in her grounds of appeal that she created the phantom GG stock unit to cover up a Horizon-generated shortfall, specifically, as it is put, that "she created a balancing account i.e., she created stock unit GG as a balancing account to address the losses which were showing on Horizon" (an assertion which was not made in her defence statement) is undermined by her dealings with the growth bond for £50,036.82 in August 2009 since those dealings suggest that she was not then, or indeed later when she created the GG stock unit and making the transfers, covering for any Horizon-generated shortfall.

445. Nor is what Ms Hussain actually did as regards the growth bond consistent with her seeking to cover up a Horizon-generated shortfall. As previously explained, she conducted the bond transaction on 13 August 2009, before reversing it out of the system two hours and ten minutes later. The following day, she entered a cheque for £50,036.82 into Horizon, and cash to the same value was shown as paid out. These were physical acts with, as Mr Altman submits, no explanation. The effect of entering the cheque on to the system was to increase the stock value by £50,000. Since as far as Horizon was concerned cash had been paid out, the cash value would have decreased by £50,000 in the accounts. If Ms Hussain did not remove the cash, when she came to balance Horizon, her accounts would show a £50,000 surplus that would need

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explanation. It would need to be declared as a positive discrepancy. However, the records show that there was no cash surplus in the accounts at the relevant time. As Mr Altman explains, Ms Hussain's explanation to the Bank of Ireland representative as to what happened, in particular that using the stock unit to process the cheque "made my till go up £50,000" and so the "money" was put in the safe with the application form for the growth bond where it remained until the transaction was again put through Horizon on 6 October 2009 when it was shown as having been settled to cash, demonstrates that the growth bond cannot explain any shortfall that required covering up and certainly not one of £83,000. Taken together with Ms Hussain's requests to work colleagues for cheques, the returned payment into her brother's account of the cheque for £8,000, as Mr Altman submits, this amounts to strong circumstantial evidence supporting Ms Hussain's guilt.

446. We are quite satisfied, in such circumstances, not only that the reliability of Horizon evidence was not essential for the case which POL brought against Ms Hussain, but furthermore that her conviction is clearly safe. Again, we reject the submission that, were we to decide that this is not a category 1 abuse case, we could nonetheless decide that it is a category 2 abuse case. It follows that Ms Hussain's appeal is also dismissed.

Conclusions:

447. For those reasons:

i) The appeals of Wendy Cousins, Stanley Fell and Neelam Hussain fail and are dismissed;

ii) The appeals of Josephine Hamilton, Hughie Thomas, Allison Henderson, Alison Hall, Gail Ward, Julian Wilson (deceased), Jacqueline McDonald, Tracy Felstead, Janet Skinner, Scott Darlington, Seema Misra, Della Robinson, Khayyam Ishaq, David Hedges, Peter Holmes (deceased), Rubina Shaheen, Damien Owen, Mohammed Rasul, Wendy Buffrey, Kashmir Gill, Barry Capon, Vijay Parekh, Lynette Hutchings, Dawn O'Connell (deceased), Carl Page, Lisa Brennan, William Graham, Siobhan Sayer, Tim Burgess, Pauline Thomson, Nicholas Clark, Margery Williams, Tahir Mahmood, Ian Warren, David Yates, Harjinder Butoy, Gillian Howard, David Blakey and Pamela Lock are allowed on both Grounds. Accordingly, all of their respective convictions are quashed.