

# The Post Office Horizon scandal: a brief chronology

A group of ex-sub-postmasters and sub-postmistresses formed The Justice For Subpostmasters Alliance (JFSA)<sup>1</sup> in 2009 as the result of experiencing significant problems with how Post Office Limited dealt with apparent shortfalls in their accounts after the introduction of the Horizon IT system in 2000.

Following years of campaigning with the support of many MPs, in 2012 the Post Office appointed Second Sight Support Services Limited, a firm of independent forensic accountants, to investigate the claims being made about the Horizon system and the associated issues. On 8 July 2013, Second Sight published an Interim Report on its findings up until that date, which led to Members of Parliament raising questions with the Minister for Postal Affairs in the House of Commons on 9 July 2013.<sup>2</sup>

The Interim Report demonstrated that there were issues that required further investigation, and in August 2013 an Initial Complaint Review and Mediation Scheme was established to investigate individual cases. The Scheme was open to both serving and ex sub-postmasters and sub-postmistresses who had concerns relating to Horizon, and offered an opportunity to have their cases independently reviewed and raised directly with the Post Office. A Working Group, comprising of representatives from Second Sight, the Post Office and the JFSA was established with an independent chair. The Scheme closed to applicants on 18 November 2013. During the 12 weeks it was open 150 applications were received.

On 9 April 2015, the Post Office terminated the Scheme Working Group, terminated the contract with Second Sight, and also that of the independent Chairman. The draft of the Second Sight Report Part Two was due to be released to the Working Group on 10 April 2015, but the action of the Post Office prevented this from taking place. The second part of the Second Sight Report (version 2) eventually appeared on a journalists' website.

In 2015, the law firm Freeths LLP agreed to represent those ex sub-postmasters and sub-postmistresses that wanted to take part in any future legal action. Therium Group Holdings Limited funded the litigation.<sup>3</sup> A Group Litigation Order

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<sup>1</sup> The Justice For Subpostmasters Alliance: <https://www.jfsa.org.uk/>

<sup>2</sup> Hansard, 9 July 2013, column 198 – column 209, <https://publications.parliament.uk/pa/cm201314/cmhansrd/cm130709/debtext/130709-0002.htm#13070952000004>

<sup>3</sup> Therium Group Holdings Limited: <https://www.therium.com/>

was subsequently made on 22 March 2017 by Senior Master Fontaine, and approved by the President of the Queen's Bench Division.

Procedural issues before the first trial are dealt with in the first judgment, *Bates v Post Office Ltd*,<sup>4</sup> and a second judgment dealt with a further application by the Post Office to strike out part of the claim in *Bates v Post Office Ltd (No 2)*.<sup>5</sup> It was anticipated that there would be four trials. In the event, only two trials have taken place.

### The first trial

The first trial concerned, in the main, the contractual position between the Post Office the sub-postmasters and sub-postmistresses. The judgment is in *Bates v Post Office Ltd ((No 3) Common Issues)*.<sup>6</sup> In this judgment, the judge included a comprehensive introduction to the issues generally between the parties at [2]-[43]. Orders in respect of costs of the Common Issues trial were determined in *Bates v Post Office Ltd (No.5: Common Issues Costs)*.<sup>7</sup>

### The second trial

The second trial, dealing with the Horizon software, took place between 11 March 2019 and 22 July 2019. During the course of this trial, the Post Office issued an application that the judge recuse himself as Managing Judge in this group litigation, and stop the Horizon Issues trial, so that it could be recommenced at some later date in the future before a replacement Managing Judge. That application was refused, for which see *Bates v Post Office Ltd (No.4: Recusal Application)*.<sup>8</sup> Permission to appeal was refused by the single Lord Justice on 9 May 2019.<sup>9</sup> Between the end of the second trial and the judgment, the parties sought mediation. An agreement was reached on 11 December 2019.<sup>10</sup> The judge handed down his judgment in the second trial on 16 December 2019.<sup>11</sup> When handing down his judgment, the judge indicated he:<sup>12</sup>

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<sup>4</sup> [2017] EWHC 2844 (QB).

<sup>5</sup> [2018] EWHC 2698 (QB).

<sup>6</sup> [2019] EWHC 606 (QB).

<sup>7</sup> [2019] EWHC 1373 (QB).

<sup>8</sup> [2019] EWHC 871 (QB).

<sup>9</sup> *Bates v Post Office Ltd (No.4: Recusal Application)* Judgment by Coulson LJ on the application by the Post Office Limited to appeal the recusal decision, 9 May 2019 (A1/2019/0855), Court of Appeal, not reported, Supplement, 18 *Digital Evidence and Electronic Signature Law Review* (2021).

<sup>10</sup> Confidential settlement deed (10 December 2019) between the claimants in the action *Bates v Post Office Limited*, Post Office Limited and Freeths LLP, [https://www.onepostoffice.co.uk/media/47518/20191210-glo-confidential-settlement-deed-executed-version-redacted\\_-003.pdf](https://www.onepostoffice.co.uk/media/47518/20191210-glo-confidential-settlement-deed-executed-version-redacted_-003.pdf)

<sup>11</sup> *Bates v The Post Office Ltd (No 6: Horizon Issues) Rev 1* [2019] EWHC 3408 (QB).

<sup>12</sup> Approved Proceedings, High Court of Justice, Queen's Bench Division, No QB-2016-004710, 16 December 2019, published in Supplement, 18 *Digital Evidence and Electronic Signature Law Review* (2021).

'had very grave concerns regarding the veracity of evidence given by Fujitsu employees in other courts in previous proceedings about the known existence of bugs, errors and defects in the Horizon system. These previous proceedings include the High Court in at least one civil case brought by the Post office against a sub-postmaster and the Crown Court in a greater number of criminal cases, also brought by the Post office against sub-postmasters and sub-postmistresses.

After careful consideration, I have therefore decided, in the interests of justice, to send the papers in the case to the Director of Public Prosecutions, Mr Max Hill QC, so he may consider whether the matter to which I refer should be the subject of any prosecution.'

In 2015, the Criminal Case Review Commission (CCRC) began reviewing claims of wrongful prosecution for offences such as theft and false accounting, caused, the complaints allege, as a result of problems with the Post Office's Horizon IT system. In 2020, the CCRC referred 47 Post Office cases on the abuse of process to the Court of Appeal.<sup>13</sup> The hearing took place on 15 January 2021.<sup>14</sup> There were two grounds of appeal: that the defendants could not have a fair trial, and that his or her trial was an affront to the conscience of the court. The Post Office did not oppose the appeals on the first ground, but did do so on the second ground. The court listed those cases for a hearing to determine, first, if each appellant was entitled as of right, as a result of the reasons of the CCRC,<sup>15</sup> the appellants could rely on the second ground. The court held, (1) that, pursuant to s 9(2) of the Criminal Appeal Act 1995, each of the defendants, having had their case referred to the court by the Criminal Cases Review Commission, had to be treated as if they were bringing an appeal against conviction under the Criminal Appeal Act 1968, and as having been granted leave to appeal against conviction on both grounds. At the hearing of the appeals, it would be the duty of the court, pursuant to s 2 of the 1968 Act, to consider whether the conviction of a defendant was unsafe; to allow the appeal if the court thought that it was unsafe; and otherwise to dismiss the appeal, and (2) that, in considering the principles which were to be applied by the court if it reached the conclusion that an appeal had to be allowed on one ground and was considering whether, in the exercise of its discretion, to hear argument on a further ground, the guiding principle had to be that the court had to act in the interests of justice.

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<sup>13</sup> The CCRC referred a further 6 cases on 13 September 2021, taking the total number of Post Office referrals made by the CCRC to 57. One further referral to the Court of Appeal has yet to be heard, and the CCRC currently has around 30 further Post Office cases under review. In addition, many people have lodged appeals directly with the Court of Appeal, for which see <https://ccrc.gov.uk/ccrc-refers-six-more-post-office-cases/>.

<sup>14</sup> *R. v Hamilton* [2021] EWCA Crim 21.

<sup>15</sup> Criminal Appeal Act 1995, s 14(4) and (4A).

### Appeal hearings

On Friday 11 December 2020, in a hearing before HH Judge Taylor in court 3 at the Crown Court at Southwark, the Post Office offered no evidence against each of the appellants, and the judge allowed the appeals of six former sub-postmasters and sub-postmistresses, entering not guilty verdicts in relation to each appeal:<sup>16</sup>

Kamran Ashraf (A20200060; conviction 28 January 2004, South Western Magistrates' Court, entered a plea of guilty to charges of theft)

Christopher Trousdale (A20200057; conviction 8 March 2004, Scarborough Magistrates' Court, entered a plea of guilty to charges of false accounting)

Susan Rudkin (A20200061; conviction 23 March 2009, Burton-upon-Trent Magistrates' Court, entered a plea of guilty to charges of theft)

Julie Cleife (A20200059; conviction 26 October 2010, Basingstoke Magistrates' Court, entered a plea of guilty to charges of fraud)

Vipinchandra Patel (A20200062; conviction 3 June 2011, Oxford Magistrates' Court, entered a plea of guilty to charges of fraud)

Jasvinder Barang (A20200058; conviction 3 August 2012, Luton Magistrates' Court, entered a plea of guilty to charges of fraud)

In what must be one of the most unrealistic comments relating to this scandal, the judge said, at [13D] 'I am sure that all of the appellants are grateful for the approach that the Post Office has taken finally to this matter and that it can be put to rest for them.'<sup>17</sup> The Court of Appeal Criminal Division heard the appeal of 42 appellants on 22, 23 and 24 March 2021 and handed down judgment on 23 April 2021.<sup>18</sup> The court concluded that:

(i) disclosure by the Post Office was inadequate;<sup>19</sup>

(ii) the prosecutions were an affront to the conscience of the court (a rare finding),<sup>20</sup> and

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<sup>16</sup> The operation of s11(2) of the Criminal Appeal Act 1995 Act has the effect of vacating the guilty pleas. Section 79 of the Senior Courts Act 1981 means that, as with any other appeal to the Magistrates' Court to the Crown Court, this matter was correctly heard in the Crown Court.

<sup>17</sup> *R v Trousdale* A20200057 in the Crown Court at Southwark 11 December 2020, published in Supplement, 18 *Digital Evidence and Electronic Signature Law Review* (2021).

<sup>18</sup> *Hamilton v Post Office Ltd* [2021] EWCA Crim 577.

<sup>19</sup> In the case of Seema Misra, disclosure was refused four times: first application before Mr Recorder Bruce, 10 March 2010 (Day 1 Monday 11 October 2010, 3C; Judge's Ruling, Day 1 Monday 11 October 2010, 25, A-C); second application before HH Judge Critchlow, 7 May 2010 (Day 1 Monday 11 October 2010, 3G); third application before the trial judge (Day 1 Monday 11 October 2010, 15H-16H) and fourth application before the trial judge (Day 6, Monday 18 October 2010, 24H-25A).

<sup>20</sup> *Hamilton v Post Office Ltd* [2021] EWCA Crim 577 at [66].

(iii) by constantly asserting that the Horizon system was ‘reliable’ [20] and [125], ‘accurate and reliable’ [68] or ‘robust and reliable’ [121], the Post Office effectively sought to reverse the burden of proof. In delivering the judgment of the court, Holroyde LJ said at [137]:

‘By representing Horizon as reliable, and refusing to countenance any suggestion to the contrary, POL [Post Office Limited] effectively sought to reverse the burden of proof: it treated what was no more than a shortfall shown by an unreliable accounting system as an incontrovertible loss, and proceeded as if it were for the accused to prove that no such loss had occurred. Denied any disclosure of material capable of undermining the prosecution case, defendants were inevitably unable to discharge that improper burden.’

Not only was it factually incorrect that the Horizon system reliable, but the failure to disclose relevant information meant:

‘[the] defendants were inevitably unable to discharge that improper burden. As each prosecution proceeded to its successful conclusion the asserted reliability of Horizon was, on the face of it, reinforced. Defendants were prosecuted, convicted and sentenced on the basis that the Horizon data must be correct, and cash must therefore be missing, when in fact there could be no confidence as to that foundation.’<sup>21</sup>

Two more subpostmasters had their convictions quashed at Southward Crown Court on 14 May 2021,<sup>22</sup> and a further twelve sub-postmasters and sub-postmistresses (Robert Ambrose, Hasmukh Shingadia, John Armstrong, Timothy Brentnall, Jerry Hosi, Gurdeep Singh Dhale, John Dickson, Abiodun Omotoso, Malcolm Watkins, Sami Sabet, Carina Price and Rizwan Manjra) had their convictions quashed at the Court of Appeal on 19 July 2021. The Post Office did not to oppose the appeals.<sup>23</sup>

### Further developments

In October 2020 the government initiated a non-statutory inquiry into the Post Office’s Horizon IT scandal led by Sir Wyn Williams, a retired High Court judge. The JFSA indicated that it would not cooperate with this inquiry. JFSA claim that a Statutory Inquiry is necessary, and sent a Judicial Review Pre-Action Protocol Letter to Paul Scully MP, Parliamentary Under-Secretary of State in the Department for Business, Energy and Industry Strategy on 25 March 2021.<sup>24</sup> In a statement made to the House of Commons on 19 May 2021, Paul Scully MP, Parliamentary Under-Secretary (Department for Business, Energy and Industrial Strategy), and Minister of State (London), gave a written

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<sup>21</sup> *Hamilton v Post Office Ltd* [2021] EWCA Crim 577 at [137].

<sup>22</sup> Colletta Smith, ‘Cleared postmaster hid conviction from his family’, BBC News, 14 May 2012, <https://www.bbc.co.uk/news/business-57113342>.

<sup>23</sup> *Ambrose v Post Office Ltd* [2021] EWCA Crim 1443.

<sup>24</sup> <https://www.ifsa.org.uk/latest---the-campaign-continues.html>.

statement to the House of Commons, indicating that ‘the government has now given notice to convert the Inquiry into a statutory inquiry under the Inquiries Act 2005 on 1st June 2021 and at the same time amend the Inquiry’s terms of reference’, which were listed in the statement.<sup>25</sup> Sir Wyn Williams provided a separate statement and placed it on the Inquiry web site.<sup>26</sup>

The Post Office also set up the Historical Shortfall Scheme, which was closed in August 2020. Apparently it received over 2,400 applications. This is greater than the Post Office had anticipated when the Scheme was established (this scheme explicitly excludes the 550 or so members of the Group Litigation Order).<sup>27</sup> On 7 May 2021 the Post Office released a further Press Release indicating that it was contacting around 540 people with potentially relevant convictions. A further 100 had also been identified where additional information is being sought.<sup>28</sup>

### This is not the end of the scandal

Please note that this resume has been prepared for the 2021 issue of the *Digital Evidence and Electronic Signature Review*, and is up-to-date as at the autumn of 2021. This scandal will continue to unfold, and the reader is advised, if they wish to keep abreast of future developments, to consult some of the references below.

### Selected additional materials

The following cases can all be obtained from British and Irish Legal Information Institute <http://www.bailii.org/>

*Bates v Post Office Ltd* [2017] EWHC 2844 (QB)

*Bates v Post Office Ltd (No 2)* [2018] EWHC 2698 (QB)

*Bates v Post Office Ltd ((No 3) Common Issues)* [2019] EWHC 606 (QB)

*Bates v Post Office Ltd (No.4: Recusal Application)* [2019] EWHC 871 (QB)

*Bates v Post Office Ltd (No.5: Common Issues Costs)* [2019] EWHC 1373 (QB)

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<sup>25</sup> Statement UIN HCWS40, <https://questions-statements.parliament.uk/written-statements/detail/2021-05-19/hcws40> .

<sup>26</sup> Independent report Statement from the Chair, 19 May 2021, <https://www.gov.uk/government/publications/post-office-horizon-it-inquiry-2020/statement-from-the-chair-19-may-2021> .

<sup>27</sup> Statement made on 18 March 2021 by Paul Scully, Minister for London and Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Statement UIN HCWS853, at [https://questions-statements.parliament.uk/written-statements/detail/2021-03-18/hcws853?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=coa\\_the\\_long\\_lonely\\_road\\_to\\_justice&utm\\_term=2021-03-22](https://questions-statements.parliament.uk/written-statements/detail/2021-03-18/hcws853?utm_source=newsletter&utm_medium=email&utm_campaign=coa_the_long_lonely_road_to_justice&utm_term=2021-03-22) .

<sup>28</sup> Press release – 7 May 2021 10:05 Post Office statement on Historical Convictions – potential future appeals, [https://www.mynewsdesk.com/uk/post-office/pressreleases/post-office-statement-on-historical-convictions-potential-future-appeals-3097740?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=Alert&utm\\_content=pressrelease](https://www.mynewsdesk.com/uk/post-office/pressreleases/post-office-statement-on-historical-convictions-potential-future-appeals-3097740?utm_source=rss&utm_medium=rss&utm_campaign=Alert&utm_content=pressrelease) .

*Bates v The Post Office Ltd (No 6: Horizon Issues) Rev 1* [2019] EWHC 3408 (QB)

*R. v Hamilton* [2021] EWCA Crim 21

*Hamilton v Post Office Ltd* [2021] EWCA Crim 577

*Ambrose v Post Office Ltd* [2021] EWCA Crim 1443

The following are published in this edition of the *Digital Evidence and Electronic Signature Review*:

Bates v Post Office Limited TLQ 17 0455 Claimants' Written Openings

Bates v Post Office Limited TLQ 17 0455 Defendants' Written Openings

Bates v Post Office Limited TLQ 17 0455 Transcript of trial

Judgment on application by the Post Office Limited to appeal the recusal decision 9 May 2019

Judgment on application by the Post Office Limited to appeal against *Bates v Post Office Ltd ((No 3) Common Issues)* [2019] EWHC 606 (QB), 22 November 2019

Day 23 Bates v Post Office Limited TLQ 17 0455 Approved handing down judgment 16 December 2019

R v Trousdale A 20200057 in the Crown Court at Southwark Appeal Hearing dated 11 December 2020

### Articles dealing with the 'reliability' of computers

Peter Bernard Ladkin, Bev Littlewood, Harold Thimbleby and Martyn Thomas CBE, 'The Law Commission presumption concerning the dependability of computer evidence', 17 *Digital Evidence and Electronic Signature Law Review* (2020) 1-4

Peter Bernard Ladkin, 'Robustness of software', 17 *Digital Evidence and Electronic Signature Law Review* (2020) 15-24

### Articles dealing with the consequences when relying on the 'reliability' of computers

Paul Marshall, 'The harm that judges do – misunderstanding computer evidence: Mr Castleton's story', 17 *Digital Evidence and Electronic Signature Law Review* (2020) 25-48

James Christie, 'The Post Office Horizon IT scandal and the presumption of the dependability of computer evidence', 17 *Digital Evidence and Electronic Signature Law Review* (2020) 49-70

Tim McCormack, 'The Post Office Horizon system and Seema Misra', 13 *Digital Evidence and Electronic Signature Law Review* (2016) 133-138

### Articles dealing with how the legal system should approach evidence in electronic form

Paul Marshall, James Christie, Peter Bernard Ladkin, Bev Littlewood, Stephen Mason, Martin Newby, Jonathan Rogers, Harold Thimbleby, Martyn Thomas CBE, 'Recommendations for the probity of computer evidence', 18 *Digital Evidence and Electronic Signature Law Review* (2021) 18-26

Michael Jackson, 'An approach to the judicial evaluation of evidence from computers and computer systems' 18 *Digital Evidence and Electronic Signature Law Review* (2021) 50-55

### Inquiry

<https://www.gov.uk/government/publications/post-office-horizon-it-inquiry-2020>

<https://www.gov.uk/government/publications/post-office-horizon-it-inquiry-2020/terms-of-reference>

Statement UIN HCWS40, <https://questions-statements.parliament.uk/written-statements/detail/2021-05-19/hcws40>

### The Historical Shortfall Scheme

<https://www.onepostoffice.co.uk/scheme#>

### Criminal Cases Review Commission

'The CCRC refers eight more Post Office cases for appeal – bringing total to 47 so far', 3 June 2020, <https://ccrc.gov.uk/the-ccrc-refers-eight-more-post-office-cases-for-appeal-bringing-total-to-47-so-far/>

'CCRC to refer 39 Post Office cases on abuse of process argument', 26 March 2020, <https://ccrc.gov.uk/ccrc-to-refer-39-post-office-cases-on-abuse-of-process-argument/>

'Six further 'Post Office' cases have been referred by the CCRC', 13 September 2021, <https://ccrc.gov.uk/news/ccrc-refers-six-more-post-office-cases/>

The Criminal Cases Review Commission's process for review of convictions relating to the Post Office and Horizon accounting system (Number 2020-0040, 3 March 2020), House of Commons Library, <https://commonslibrary.parliament.uk/research-briefings/cdp-2020-0040/>

### Scotland

Reevel Alderson, 'Post Office scandal: Scottish probe into sub-postmasters' convictions,' BBC Scotland, 30 September 2020, <https://www.bbc.co.uk/news/uk-scotland-54339004>

### Academic study

University of Exeter Law School: Post Office project

<https://evidencebasedjustice.exeter.ac.uk/current-research-data/post-office-project/>

### The scandal in the general and political context

The Post Office Trial, web sites run by the journalist Nick Wallis:

<https://www.postofficetrial.com>

<https://www.postofficescandal.uk/>

Karl Flinders of *Computer Weekly*, Tony Collins of [Campaign4Change](#) and Bryn Jones of *BBC Cymru Fyw* have written on this scandal since the beginning, and continue to write extensively on the wider issues, as has Tim McCormack

<https://problemwithpol.wordpress.com/>

Nick Wallis has written the first of what will probably be a number of books on the scandal: Nick Wallis, *The Great Post Office Scandal: the fight to expose a multimillion pound IT disaster which put innocent people in jail* (Bath Publishing, 2021)

### Television and radio journalism

'Scandal at the Post Office', BBC 1 Panorama programme, broadcast on Monday 8 June 2020 at 7:30 pm (reporter: Nick Wallis; producers: Matt Bardo and Tim Robinson; executive producer: Andrew Head; editor: Rachel Jupp)

'Trouble at the Post Office', BBC 1 Panorama programme, broadcast on Monday 17 August 2015 at 7:30 pm (reporter: John Sweeney; producer: Matt Bardo; executive producer: Andrew Head; editor: Ceri Thomas)

### Radio journalism

'The Great Post Office Trial: The Reckoning', BBC Radio 4, broadcast on Monday 31 May 2021 (presenter: Nick Wallis; producer: Robert Nicholson; executive producer: Will Yates; A Whistledown production for BBC Radio 4)

'The Great Post Office Trial', BBC Radio 4, broadcast in 10 episodes at 13:45 every day during the week from Monday 25 May 2020 to Friday 5 June 2020 (presenter: Nick Wallis; producer: Robert Nicholson; executive producer: Will Yates; A Whistledown production for BBC Radio 4)