



Neutral Citation Number: [2023] EWCA Crim 979

Case No: 202202147 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT
AT MANCHESTER, CROWN SQUARE
RECORDER MURRAY
T20060748

Strand, London, WC2A 2LL

Date: 15/08/2023

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION,
LORD JUSTICE HOLROYDE
MR JUSTICE PICKEN
and
SIR NIGEL DAVIS

Between:

JOANNE O'DONNELL
(deceased)

Appellant

- and -

POST OFFICE LIMITED

Respondent

Tim Moloney KC (instructed by Hudgell Solicitors) for Mrs O'Donnell
Jacqueline Carey KC and Charlotte Brewer (instructed by Peters & Peters Solicitors LLP)
for Post Office Limited

Hearing date: 27 June 2023

Approved Judgment

Lord Justice Holroyde:

1. On 25 May 2007, after a trial in the Crown Court at Manchester, Crown Square before Recorder Murray and a jury, Joanne O'Donnell ("Mrs O'Donnell") was convicted of theft. She was sentenced to 7 months' imprisonment, and ordered to pay compensation and costs. No appeal against her conviction or sentence was brought at that time. Mrs O'Donnell's case has now been referred to this court by the Criminal Cases Review Commission ("CCRC"). The CCRC's reference takes effect as an appeal against conviction, so that no application to this court for an extension of time or for leave to appeal has been necessary. Sadly, Mrs O'Donnell died on 2 June 2016. Her widower Mr Ian O'Donnell has been approved to bring the appeal on her behalf.
2. At the conclusion of the hearing on 27 June 2023 we indicated that we would reserve our judgment and give our decision and reasons in writing at a later date. This we now do.

Horizon cases

3. This court has previously considered appeals against conviction by many persons formerly employed as sub-postmasters, sub-postmistresses or managers of sub-Post Offices (for convenience, all referred to as "SPMs"), who had been prosecuted many years ago by Post Office Limited or its predecessor ("POL") and had pleaded guilty to, or been convicted of, offences of dishonesty. The judgments in those cases are publicly available, and it is unnecessary to repeat all that was said in them: see *The Queen v Josephine Hamilton and others* [2021] EWCA Crim 577; *The Queen v Robert Ambrose and others* [2021] EWCA Crim 1443; *The Queen v Roger Allen and others* [2021] EWCA Crim 1874; *The Queen v Margaret White & others* [2022] EWCA Crim 435; *The Queen v Richard Hawkes & others* [2022] EWCA Crim 1197; and *The King v Sheila Coultas & another* [2023] EWCA Crim 606.
4. Those cases raised issues as to abuse of process, and as to the safety of the convictions, having regard to concerns about the reliability of a computerised accounting system, "Horizon", which was in use in sub-Post Offices at the relevant times. Fraser J, in earlier civil proceedings, had made findings which showed that there had been inadequate investigation of those concerns, and/or a failure to make full and accurate disclosure about the concerns to those who were being prosecuted on the basis that Horizon showed a shortfall in the accounts of the sub-post office. In *Hamilton* and subsequent cases the court used the shorthand term "Horizon case" to refer to a case in which the reliability of Horizon data was essential to the prosecution, and in which there was no independent evidence of an actual loss from the account at the branch Post Office concerned, as opposed to a Horizon-generated shortage. The court considered each of the two well-established categories of case in which an accused person may seek to discharge the burden of establishing that a prosecution should be stayed as an abuse of the process: cases in which it is not possible for the trial process to be fair ("category 1 abuse"); and cases in which it would be an affront to the public conscience for the accused to be prosecuted ("category 2 abuse").
5. In *Hamilton* the court concluded that, throughout the relevant period, there were significant problems with Horizon, which gave rise to a material risk that an apparent shortfall in branch Post Office accounts did not in fact reflect missing cash or stock, but was caused by one of the bugs, errors or defects which (as Fraser J had found) existed

in Horizon. The court also concluded that, during the relevant period, POL knew that there were serious issues about the reliability of Horizon, and that POL failed adequately to consider or to make relevant disclosure of problems with or concerns about Horizon, instead asserting that Horizon was robust and reliable. Further, the court was satisfied that POL had consistently failed to be open and honest about the issues affecting Horizon and had effectively steamrolled over any SPM who sought to challenge its accuracy.

6. Mr Moloney KC submits that the appellant's case is an Horizon case, that her prosecution was an abuse of the process (in both category 1 and category 2), and that her conviction is unsafe for reasons similar to those which have led to the successful appeals in the earlier cases. On behalf of POL, Ms Carey KC and Ms Brewer oppose the appeal.

Summary of the relevant facts

7. Mrs O'Donnell was an assistant working primarily at the North Levenshulme Post Office in Manchester. She also provided relief cover for other branches in the area, including Hyde Road, Hanging Ditch and Fog Lane. By the time of her prosecution, she had some 30 years' experience, during which time her record had been impeccable. She had been commended for her bravery when confronted by armed robbers at a branch at which she was working. She had no convictions.
8. In November 2004, the Department of Work and Pensions ("DWP") informed POL that in April and May that year pensions and allowance ("P&A") payments had been paid at the North Levenshulme Post Office on books which had been reported as lost in transit, or as not having been handed to the customer, and which were therefore subject to a "stop notice". The relevant payments had been made despite the stop notice being in force. The counterfoils (or "dockets") had been date stamped, and transaction logs indicated that the majority of the payments had been made with Mrs O'Donnell's user ID. The payments had been inputted manually into the Horizon accounting system, rather than by the use of the bar code scanner.
9. The system by which customers entitled to receive P&A payments could draw them from their local Post Office can for present purposes be summarised as follows.
10. The customer's first payment book was sent to their nominated Post Office, which was identified on the front page of the book. Subsequent payments should be drawn at that nominated Post Office: a customer was only allowed to receive two payments away from their nominated branch.
11. About a month before the last order in the current book was to be paid, the next book would be sent to the nominated branch. When the last order has been paid, the replacement book would be given to the customer and the old book retained. If, however, the replacement book was not at the nominated Post Office, the customer had to report that fact at a DWP office. The DWP then issued a stop notice in relation to the book that was not available for collection, the effect of which was that no payment should be made against any of the vouchers in the stopped book. A new book was then issued. The customer may have received an emergency payment to avoid hardship until the new book arrived.

12. At all relevant times, POL operated a system known as the Order Book Control Service (“OBCS”). The POL Operations Manual in relation to the payment of DWP pensions and allowances included the following explanation and instructions:

“OBCS provides a check on the status of order books when they are received in a Post Office branch, when they are issued to customers and at the time of encashment. The redirection facility also provides an audit trail for the movement of order books from one Post Office branch to another.

In order that the system is able to make valid checks on order books to ensure that payments are only made when appropriate, you must scan the bar-code on the front cover of an order book in the following circumstances:

when you receive the book in your branch

when you issue the book to the payee or agent

when the customer presents a book for payment

when you redirect the book to another Post Office branch.

On each scan the status of the book is checked on the system stoplist and you must follow the directions that you are given on the Horizon system. At time of payment the system advises you if a full payment may be made, whether a restricted payment is appropriate, or if the book must be impounded. When the bar-code has been read successfully by the system, you will hear a beep. You will not hear this if the bar-code is unreadable.

The corresponding messages that appear on the Horizon system are:

Encash (pay all of the valid foils in the customer’s book)

Recall pay valid foils either up to and including a specific date or one valid foil and impound the order book)

Impound (impound the order book without making a payment)”.

13. The manual went on to explain that, if a book failed to scan after three attempts, various details from the book (e.g. customer reference number, serial number etc.) should be entered manually into the system.
14. Thus a stop notice should be shown by the Horizon system if a stopped book was presented for payment. In addition, sub-Post Offices were issued with weekly lists of all the P&A books subject to stop notices, and instructed to make copies of the list available to counter staff.

The arrest and interviews

15. On 4 March 2005, Mrs O'Donnell was arrested and interviewed under caution. During the first interview, Mrs O'Donnell stated that she had been working for the Post Office as a counter clerk for 30 years at a number of locations, including North Levenshulme where she currently worked and Hanging Ditch, Fog Lane and Hyde Road. When asked about the procedure for making a P&A payment, Mrs O'Donnell explained that, if she was very busy and the book would not scan, she would enter the information manually. She stated that she used the manual entry method about three to four times a week, though there would be some weeks where she would not make any manual entry.
16. Mrs O'Donnell was shown a schedule which listed P&A books which had been manually entered between the end of March and the end of May 2004 whilst she was working at North Levenshulme. She was informed that each of the payments on the schedule had been made using her user ID, and that they were not errors as there were no accounting misbalances. Mrs O'Donnell agreed that the schedule showed a high level of manual entries. She explained that she would on occasions give her password to a colleague. She stated that the entries did not necessarily mean that she had made payments even though a P&A book was subject to a stop notice. She said that, even if her user ID was used, it might be because she would sometimes go into work in the morning and, if there was stock in the bundle which was not on the system, she would enter the transactions manually.
17. When questioned about payments made in December 2004 at the Hyde Road sub-Post Office, Mrs O'Donnell initially denied working there at that time. When informed that payment records showed otherwise, she requested a break in interview. When the interview was resumed, Mrs O'Donnell explained that a male colleague in fact worked at Hyde Road in December 2004, but that she was recorded as working there so that he could be paid in cash and thereby avoid paying tax on his earnings. She reiterated that she could not be responsible for any of the questioned payments at Hyde Road in December 2004.
18. Mrs O'Donnell was then questioned about fraudulent P&A payments at Hyde Road on occasions other than in December 2004. She stated that she would have been working alone when she was providing relief cover there. When informed that records showed that she had been working on her own at Hyde Road between 13 and 20 April 2004 and between 9 July and 1 August 2004, Mrs O'Donnell stated that she could not be sure, but she appeared to agree with these dates. When told that in the weeks ending 21 and 28 July 2004, fraudulent encashments totalling some £2,643 had been made at Hyde Road, Mrs O'Donnell responded by saying "no way". She was shown a schedule of the fraudulent encashments, and confirmed that she "must have done them", but stated that she did not remember the transactions.
19. A list of branches where Mrs O'Donnell had worked, and the amounts of fraudulent encashments made during those periods, was read out to her. Mrs O'Donnell was informed that some of the books which had been reported as lost in transit had been taken from one branch at which she had worked, and cashed at another branch where she was working. When it was alleged that all of the manual entries were for books subject to a stop notice, Mrs O'Donnell insisted that there must be more manual entries.
20. Mrs O'Donnell was also told that there was a high percentage of manual entries when she was working on the counter. She said that, at times, she would find dockets that had not been entered from the previous day and would manually input them and that her

estimate of three to four per week was only for the customers she had served and manually input by herself.

21. The interviewers went on to inform Mrs O'Donnell that, when fraudulent payments at North Levenshulme were made using her user ID, only she and the sub-postmaster were working there; and that, when she worked at other branches, that sub-postmaster was not working at those other branches, yet fraudulent encashments were still being made. When asked why this was, Mrs O'Donnell stated that she could not give a reason. She went on to say that she was guilty of "sheer negligence". When it was pointed out that she was a very experienced clerk to have made this sort of mistake, she said that she "blamed the system", although she did not elaborate on what she meant by this.
22. In a third interview, Mrs O'Donnell explained that, if the bar code reader was inoperative, she would enter dockets manually, although she could not remember when this had occurred. It was pointed out, however, that in relation to the dockets about which she was being asked, the barcode reader must have been working because other items were being scanned at the relevant time. Mrs O'Donnell admitted that she had not checked the list of stop notices generated by the system because it was "too big", and said that she had become "slapdash".
23. Mrs O'Donnell was further interviewed on 31 May 2005. In preparation for the interview, information known as ARQ data, extracted from the Horizon system, was obtained by Post Office investigators. She was informed that, at the Fog Lane sub-Post Office, eight payments had been made with her user ID during a period of one week when she was working at that branch, all of which had been manually inputted. Mrs O'Donnell was also informed that POL had checked whether there had been fraudulent encashments at the Fog Lane, Hyde Road and Hanging Ditch branches in the two weeks before and after she had been working there, and that no such encashments had been made. She was told that some P&A books had "followed" her around to the branches she worked at: for example, dockets from one book had been paid at three different Post Offices using her user ID at times when she was the only employee logged onto the system at those branches. She replied "no comment" to most of the questions asked, indicating that she was acting on advice in doing so. However, when asked at the conclusion of the interview if she had anything to say, she stated: "It's all unbelievable and I haven't done it".

The proceedings in the Crown Court

24. On 11 October 2006 Mrs O'Donnell filed a defence statement, in which she denied that she had removed any P&A books from any branch and denied that she had made any fraudulent P&A transactions. She also denied that she had manually inputted information in order deliberately to bypass the OBCS: rather, she had from time to time manually inputted details because she had encountered difficulties in using the scanning equipment.
25. Mrs O'Donnell was charged on an indictment alleging a single count of theft. The particulars of the count alleged that between 3 March 2004 and 30 December 2004 she stole £20,526.16 belonging to POL. In support of that single count, the prosecution relied on 124 suspect transactions. It was the prosecution case that Mrs O'Donnell had manually inputted details in order to avoid the system identifying that a stop notice was

in place, and had deliberately refrained from checking the printed list of books subject to stop notices.

26. The trial lasted five days. The jury, as we have said, convicted Mrs O'Donnell.
27. In his sentencing remarks, the Recorder indicated that he sentenced on the basis that of the 124 suspect transactions, 22 were not made with Mrs O'Donnell's user ID; 13 bore the impression of a date stamp other than that which she was using at the relevant time; 17 were cashed at a different branch; and 5 were cashed at a branch where another member of staff may have been responsible.

The grounds of appeal

28. Mrs O'Donnell has adopted as her two grounds of appeal the reasons which the CCRC gave when referring her case to this court. Ground 1 is that her conviction is unsafe because of a material failure of disclosure, such as to make this a case of category 1 abuse of process. Ground 2 is that the combination of a number of factors present in Mrs O'Donnell's prosecution, including "the unreliability of Horizon data that was essential to the prosecution of her, the poor level of investigation of her case and serious failings in disclosure", renders her conviction unsafe on the basis of category 2 abuse of process.
29. The appeal was initially listed for hearing on 21 December 2022, but was adjourned (at the request of both parties) to allow time for further disclosure, following the identification of relevant material during the course of the Post Office Horizon IT Inquiry which is being conducted by Sir Wyn Williams. Subsequently, there was further disclosure, including the production of records by Fujitsu, the company which designed and installed the Horizon system.
30. At the hearing on 27 June 2023, Mr Moloney submitted that the further material which had been disclosed during the period of adjournment strongly supported the grounds of appeal, in particular because it corroborated in material ways Mrs O'Donnell's account in interview and demonstrated the unreliability of the OBCS which underpinned her conviction.

Summary of the submissions

31. Mr Moloney acknowledged that Mrs O'Donnell had admitted that she had not followed the correct procedures at work. He also accepted that this case did not involve any unexplained shortfall, and in that respect differed from the Horizon cases which this court has previously considered. He submitted that the reliability of the Horizon system was nonetheless essential to the prosecution of Mrs O'Donnell because the reliability of the OBCS and the accuracy of the stop list were integral parts of the operation of the Horizon system, but were prone to error. He pointed out that the investigation had been initiated by the DWP's report that payments had been made despite a stop notice being in force: POL had then had to carry out an analysis of the discrepancies using the Horizon system, and it was that analysis which had shown what were considered to be fraudulent encashments. Further, the prosecution at trial had not adduced any evidence from any customer to confirm that a P&A book had been reported missing, or to confirm that it had been necessary to seek an emergency payment pending the delivery of a replacement book.

32. Mr Moloney submitted that the Horizon system should show that a stop notice was in force, whether the details of the relevant P&A docket had been scanned into the system or inputted manually: if, therefore, the Horizon and OBCS systems were not reliable, there could be no certainty that a P&A book had in fact been stopped and had in fact been fraudulently encashed. Nor could there be certainty that Mrs O'Donnell would have been alerted by the system to the existence of a stop notice. Mr Moloney emphasised Mrs O'Donnell's long years of service and positive good character, and submitted that the material now available supported her case that the Horizon system would sometimes not operate properly, in particular by not reading barcodes, with the result that Mrs O'Donnell would be required manually to input P&A payments. He therefore argued that the disclosure which has recently been made showed the unreliability of the OBCS, and undermined the prosecution case that Mrs O'Donnell had a dishonest motive for her manual inputting of the details of the questioned dockets.
33. Mr Moloney invited our attention to documents showing that Mrs O'Donnell raised difficulties in relation to the barcode reader on dates in January, February, July, August and October in 2000, March, April (three times), May and August (twice) in 2001; November 2002; and February 2004 (twice), as well as during the period covered by the indictment, namely in March, May and August (twice) in 2004. He further relied on documents containing entries in November 1999 (five times), December 1999 (twice) and August 2000 showing that problems with balancing had been raised at branches where Mrs O'Donnell was working at the relevant times; and documents showing that hardware problems had been reported in November and December 1999, October 2000 (twice), May 2001, November 2001 (three times), June 2003 and February 2004.
34. As to the general unreliability of the OBCS, Mr Moloney submitted that the new disclosure showed recorded incidents of benefit books which were subject to a stop notice, and therefore should have been impounded without payment being made, being cashed without any warning as to their status from the Horizon system. He also pointed to documents showing that the OBCS consistently failed to meet acceptance targets during its development, with concerns being expressed that the OBCS and the ICL Pathway scanner were not fit for purpose.
35. Mr Moloney suggested that that it was unfair that certain allegations had been put to Mrs O'Donnell in interview which were subsequently shown to have been inaccurate. He submitted that it would be unfair to rely on those matters when this court is considering whether Mrs O'Donnell's conviction is safe. He further submitted that the basis on which the Recorder sentenced, and the sentencing remarks to which we have referred at paragraph 27 above, indicate an acceptance by the Recorder that other allegations put to Mrs O'Donnell in interview were unreliable.
36. In response, Ms Carey acknowledged the difficulties which Mr O'Donnell faced, given that his late wife is no longer alive and that relevant documents are no longer available, but emphasised that the law places the burden on the accused to show on the balance of probabilities that proceedings are an abuse of the process of the court. She submitted that the burden has not been discharged in this appeal.
37. Ms Carey, disputing the factual basis of one of Mr Moloney's submissions referred to at paragraph 32 above, contended that the OBCS was not engaged if a docket was not scanned, and that the manual inputting of information therefore enabled Mrs O'Donnell

to bypass the system. But in any event, she submitted, the reliability of the Horizon system was not essential to the prosecution of Mrs O'Donnell, and the recent disclosure therefore could not support the appeal: it had not been suggested on behalf of Mrs O'Donnell that there were unexplained losses or misbalances; and the defence at trial was not that money had not been stolen, but rather that Mrs O'Donnell had not been responsible for the fraudulent encashment of dockets from stopped P&A books. Furthermore, Ms Carey submitted, much of the recently disclosed material related to problems encountered some years before the indictment period, and it could not be assumed that those problems had not been rectified by the time of the relevant transactions. Ms Carey pointed to what she submitted were strong features of the circumstantial case against Mrs O'Donnell, including the fact that certain P&A books were the subject of fraudulent encashments at more than one branch where Mrs O'Donnell was working at the relevant times.

38. Ms Carey went on to submit that the absence of evidence from any of the customers whose P&A books had been stopped was a matter on which Mrs O'Donnell's counsel could have commented at trial; and the ARQ data which had been disclosed before trial enabled the defence to advance any submissions they wished to make about the reliability of Horizon.
39. As to what was put to Mrs O'Donnell in interview, Ms Carey submitted that the questions posed may have been an accurate reflection of the state of knowledge at that stage of the investigation. Similarly, she suggested, the Recorder's sentencing remarks may simply have reflected the evidence given at trial, and so should not be taken as casting doubt on the reliability of Horizon.

Analysis

40. We are grateful to all counsel for their written and oral submissions, which we have found very helpful. We have reflected upon them, and have considered all of the recently-disclosed documentation. Our conclusions are as follows.
41. The court has emphasised in *Hamilton* and subsequent cases that the mere fact that some part of the Horizon system was referred to in the prosecution's evidence does not mean that a conviction should necessarily be regarded as unsafe. As was emphasised at paragraph 123 of the judgment in *Hamilton*, an appellant must show that the reliability of Horizon was essential to the prosecution. In *White*, at paragraph 10, the court summarised the position in this way:

“Given that Horizon, once introduced into a branch, was the accounting system for that branch, it is of course inevitable that Horizon data formed part of the prosecution evidence in very many cases of alleged dishonesty by a SPM. But the mere fact that such evidence was adduced does not make it a Horizon case as that shorthand term is used in these appeals, because the Horizon data may not have been essential to the prosecution case. Nor does it mean that in every case in which Horizon data formed part of the prosecution case, the proceedings should necessarily have been stayed as an abuse of the process. A stay on grounds of abuse of process is always an exceptional remedy. Whenever that remedy is sought in a case of this kind, a fact-

specific decision will be required as to whether Horizon evidence was essential to the prosecution.”

42. In the present case, it is in our view clear that Horizon evidence was not essential to the prosecution of Mrs O’Donnell.
43. First, the fact that P&A dockets had been fraudulently encashed, and monies stolen, could be and was proved without reference to Horizon. As we have said, this is not a case in which there was an allegation of an unexplained shortfall based solely on Horizon’s figures: it was not in dispute that the relevant P&A books had been sent to the sub-Post Offices concerned; it was not in dispute that they were the subject of stop notices, which must have been issued following a report by an aggrieved customer; and the fact that payments had been made on vouchers from those books was proved by producing the paid dockets. The precise amount stolen was not a material averment, and therefore doubts about some of the suspected transactions would not mean that the allegation of theft could not be proved.
44. Secondly, the circumstantial evidence that it was Mrs O’Donnell who had stolen money by fraudulent encashments did not depend on the reliability of Horizon. There was no suggestion that any of the customers who had reported their new P&A books missing, and so had been issued with replacement books, was implicated in any dishonest scheme. The dates and places at which dockets from the stopped books had been encashed could be and were proved by reference to the paid dockets. The fact that Mrs O’Donnell was working at the relevant branches at the relevant times, and the attribution to her of the date stamps used on the dockets, were not in dispute.
45. The circumstantial evidence implicating Mrs O’Donnell in the fraudulent transactions was, moreover, very strong. In particular, we accept Ms Carey’s submission that the pattern of books following Mrs O’Donnell to the various branches at which she worked, and the transactions thereafter being manually entered, is consistent with a fraud being carried out rather than there having been a problem with Horizon.
46. We have found it an unsatisfactory feature of the appeal that there has been room for disagreement between the parties as to whether the Horizon system would alert an SPM to the existence of a stop notice, even if the details of a docket were inputted manually rather than scanned in using the barcode reader. The documentary material shown to us is not clear. We accept for present purposes that Mr Moloney’s submission is correct, and that the stop notice would be shown on manual inputting. However, we do not think that anything turns on this, because we cannot think that it was a contentious issue at trial. At the time of the trial, within 3 years of the questioned transactions, there must either have been common ground between the parties, or any dispute could readily have been resolved by reference to contemporaneous materials.
47. We are therefore satisfied that this is not a Horizon case, as that shorthand term has been used in other appeals, and that in reality the appeal is based on allegations of material non-disclosure. We say at once that it is in our view quite impossible to argue that the prosecution of Mrs O’Donnell was a category 2 abuse of process: cases in that category are by their nature very rare, and the circumstances of this case come nowhere near providing a foundation for such an argument. Mr Moloney sought to argue that it is a case of category 1 abuse, and the conviction is unsafe, because Mrs O’Donnell was denied disclosure of information which would have enabled her to advance a

stronger defence than was possible at trial. With all respect to the typically skilful way in which Mr Moloney made his submissions, we are unable to accept the argument.

48. First, the material recently disclosed relates to problems predominantly occurring in 2000-2001, rather than the period in 2004 covered by the indictment. We accept Ms Carey's submission that there is no basis for the court to assume in Mrs O'Donnell's favour that none of the earlier problems had been rectified by 2004. The fact that the disclosure does not reveal numerous complaints and reports continuing from 2000 to 2004 suggests that specific problems, in particular those affecting the scanning equipment, were resolved from time to time.
49. Secondly, the submissions based on the recent disclosure relate largely to scanning problems. Quite apart from the fact that Mrs O'Donnell would have known at the time of trial whether she had suffered serious difficulties in that regard, and so would have been able to adduce evidence on the point, we do not see how the disclosed material could have assisted her case. The submission made on her behalf, which we have accepted, is that manual inputting would have triggered an alert to the existence of a stop notice. But even if that were not the case, Mrs O'Donnell had available to her the printed lists of current stop notices, which on her own admission she chose not to check. The existence of a stop notice would therefore have been apparent to Mrs O'Donnell.
50. Thirdly, there was and is no evidence which would support a general assertion that the Horizon system frequently failed either to display the existence of a stop notice or to add a stop notice to the master list circulated to branches. The material we have been invited to consider does not, on analysis, assist Mrs O'Donnell in this respect.
51. The ARQ data, which had been disclosed to Mrs O'Donnell, would have identified if any of the P&A transactions were scanned and so, if relevant, at trial, the defence would have been able to advance submissions to the effect that the instruction on Horizon did not always accord with the stop list. That, however, was not the case which Mrs O'Donnell was seeking to advance. At no stage did she assert that the books were not on the stop list. Her case was that she did not remove them from the respective branches to which they were sent.
52. Similarly, the disclosure concerning calls made to the Horizon helpline concerning bar code reader problems does not assist Mrs O'Donnell. Of the nine entries which record Mrs O'Donnell as being the caller, in relation to six it is not clear that bar code reader issues were being reported or that a bar code reader problem was one that affected P&A transactions, whereas in relation to other entries it appears that the difficulties were overcome with rebooting of the system or an engineer being called out. In any event, since Mrs O'Donnell was the caller in the majority of the entries, she would have been in a good position to request disclosure relating to these matters and give evidence about bar code reader problems. As Ms Carey put it, at most the disclosure supports Mrs O'Donnell's contention that she experienced scanning problems "from time to time"; but this information was already available from the ARQ data that was served, and was put before the jury by way of the agreed fact table which set out all the manual entries at the various branches.
53. As for the log entries relating to balancing problems, there are a number of difficulties with Mrs O'Donnell's reliance on these. The first and most fundamental is that this is not a case involving an unexplained shortfall but one where fraudulent payments were

made and, as such, the alleged balancing problems have no relevance to the issue in this case. Secondly, the entries relied upon relate to problems reported between November 1999 and August 2000, long before the period covered by the indictment. Thirdly, the entries only concern North Levenshulme, and not other Post Offices where Mrs O'Donnell worked and which were covered by the indictment. Fourthly, not every log relates to a possible Horizon-generated problem, with some seemingly relating to human error. Lastly, in all but one instance, the caller was given advice to correct the balancing problem and the matter was resolved.

54. This leaves the entries concerned with hardware difficulties. However, there is nothing to indicate that such difficulties repeatedly gave rise to a situation in which Mrs O'Donnell innocently encashed dockets from books which had been reported missing and were subject to a stop notice.
55. It is very unsatisfactory that, despite the sequence of appeals which have come before this court, the production by Fujitsu of documents plainly relevant to this case came so very late in the day. For the reasons stated, however, we are unable to accept the submission that the disclosed material provides strong support for Mrs O'Donnell's appeal.
56. We turn, next, to Mr Moloney's further submission that it was unfair that Mrs O'Donnell had put to her in interview certain allegations which were subsequently shown to have been inaccurate.
57. These include, perhaps most significantly, the fact that it transpired (and this was known by the time of trial) that the number of manual entries at the Hyde Road Post Office during the weeks ending 21 and 28 July 2004 was 10, not the 20-30 which had been suggested in interview. We do not consider this to be material: whatever the precise number of manual entries, Mrs O'Donnell accepted in interview that she had worked on her own at that branch, from which it follows that she was responsible for those entries. Furthermore, the fact that there was no fraudulent activity during the two weeks before and after Mrs O'Donnell worked at Hyde Road is evidence which counted against her.
58. Nor, in our view, is Mrs O'Donnell's appeal assisted by the basis of sentence which the Recorder indicated in his sentencing remarks. It is not possible, so many years after the trial and in the absence of comprehensive documentation, to know what evidence the Recorder had in mind when adopting the approach he did. We cannot infer from his approach that there were concerns about the general reliability of Horizon or of the OBCS. Indeed, apart from a brief reference to Horizon in one of the interviews, there was never any suggestion on Mrs O'Donnell's part that Horizon (or OBCS) played any role in matters.
59. We recognise, of course, that there were strong points to be made in Mrs O'Donnell's favour, in particular relating to her good character and long record of service. The fact that she was in a comfortable position financially was also a point in her favour, and could be said to provide an answer to the financial motive suggested by the prosecution. However, those were matters which the jury must have considered before reaching their verdict, and the recent disclosure could not affect the jury's decision in that regard.

Conclusion

60. We have read a moving letter by Mr O'Donnell, which makes clear the distress which Mrs O'Donnell and her family suffered as a result of her conviction. We can well understand why he remains convinced of her innocence and wishes to clear her name. We must, however, decide this appeal in accordance with the law rather than on a basis of sympathy. For the reasons we have given, this is not one of the exceptional and rare cases in which it would be appropriate to conclude that Mrs O'Donnell's conviction is unsafe on either of the abuse of process grounds which have been advanced on her behalf. We are satisfied that the conviction is safe. This appeal therefore fails and must accordingly be dismissed.