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	Delivered: **25/10/2022**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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v

ALAN WILLIAM McLAUGHLIN

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Mr Moloney KC (instructed by Madden & Finucane, Solicitors), Michael Halleron BL for the Appellant
Mr Henry (instructed by the Public Prosecution Service) for the Public Prosecution Service "PPS"

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Before: Keegan LCJ, Treacy LJ and Horner LJ

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KEEGAN LCJ (*delivering the judgment of the court Ex Tempore*)

[1] We are in a position to give a judgment in this case this afternoon and that is on the basis of the helpful written submissions that we have received which have been supplemented by the oral arguments today. This ruling will in due course be committed to writing.

[2] On 16 February 2005 the applicant, Mr McLaughlin, pleaded guilty to 15 offences of false accounting, contrary to section 17(1)(a) of the Theft Act (Northern Ireland) 1969. The charges relate to the applicant's employment at Brookfield Post Office in Tennent Street, Belfast, where he was a sub-postmaster. The total loss alleged to have been occasioned to the post office was in the region of £10,000. The applicant pleaded not guilty at arraignment to the charges against him but changed his plea to guilty at trial and was ultimately convicted and fined £700 in relation to all of the charges and a compensation order in the sum of £1300 was made.

[3] He now seeks leave to appeal his conviction and an extension of time some 17 years later. The reason for this application is set out in the helpful skeleton argument filed by Mr Maloney KC on the applicant's behalf. This case follows a

large number of convictions which have been quashed in England and Wales of sub-postmasters and related employees of the post office. The background to these cases is explained in a comprehensive judgment of Lord Justice Holroyde in the case of *Hamilton and others* [2021] EWCA Crim 577.

[4] We will not for the purposes of today's ruling repeat all of the salient issues that are examined in that decision. Suffice to say that we have considered the case along with some of the subsequent cases in this area. From review of the law it is clear that issues have arisen in relation to convictions which are based on the operation of the Horizon system which operated in post offices. Whether a conviction should be quashed depends on the circumstances of each case.

[5] The *Hamilton* case concerned 42 men and women who were employed by Post Office Ltd or its predecessors The Post Office and Post Office Counters Ltd 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 were referred to the Court of Appeal in England and Wales by the Criminal Cases Review Commission to decide whether their prosecutions were an abuse of process of the court and whether their convictions were unsafe. These cases centred on the reliability of the computerised counting system which was in branch offices during the relevant period known as the Horizon system.

[6] Briefly, we want to refer to the characteristics of the Horizon system as Holroyde LJ sets out in *Hamilton*. It is an electronic point of sale and accounting system. It was designed and installed in about 2002. It provided a computerised system of accounting within branch post offices and between the branches and Post Office Ltd. The judgment also points out that the system did not allow for a facility to dispute the figures raised by Horizon in relation to accounting at the various post offices. Persons were required instead to contact the helpline. At para [19] of the *Hamilton* case the judge also sets out concerns about Horizon as follows:

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

[7] The initial roll-out of Horizon was delayed by technical issues from an early stage of its introduction, some of the users were experiencing and reporting

discrepancies and shortfalls in their branch accounts which they considered were caused by faults in Horizon. However, the system was said to be reliable. But ultimately, the difficulties have come to light and resulted in a number of the convictions based upon this accounting system being quashed in *Hamilton* and subsequent cases.

[8] This has occurred in some of the cases even where a guilty plea has been entered and the *Hamilton* case explains the rationale for that at para [125] of the judgment as follows:

> "125. We also bear in mind that many of the appellants pleaded guilty. But as we have already said, 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 the appellants in "Horizon cases" were founded upon Post Office Limited's ("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."

[9] A number of similar cases have arisen in Northern Ireland. One appeal is defended, which we are hearing in January. In the present case the prosecution does not oppose the application for leave to appeal and an extension of time. The reasons for that concession are set out in the skeleton argument helpfully filed by Mr Henry. Specifically, at para 3 of that argument the following rationale is found:

> "The PPS does not oppose this appeal because the prosecution case relied on the reliability of the Horizon system and because the applicant placed the reliability of that system in issue during the proceedings in the Crown Court. As a result, he ought to have been provided with disclosure about the problems within that system, that

> was not done. The PPS which conducted the prosecution was not made aware of the problems. As a result of not receiving disclosure the applicant's proceedings were unfair. There was a breach of his Article 6 right to a fair trial sufficient in the circumstances to raise a sufficient sense of unease about the safety of the convictions to warrant them being quashed."

[10] The legal test which this court must apply emanates from the case of *R v Pollock* [2004] NICA 34 which is essentially that if this court decides that it has a significant sense of unease about any conviction the conviction may be quashed. The issue of extension of time is obviously related to information that has come about as a result of the Horizon cases. The test in relation to that is found in a case of *R v Brownlee* [2015] NICA 39. That case tells us that each court will consider a request for an extension of time against the circumstances of the particular case and taking into account the merits of a particular case. The PPS is not opposing the substance of the appeal, notwithstanding the long period of time since conviction.

[11] The facts are set out in the various skeleton arguments and we will not repeat them at this point but save to say issues arose in relation to discrepancies with records from this post office where the applicant worked. He was interviewed about the discrepancies and then he was charged with the 15 offences we have referred to. As Mr Henry confirms in his argument it is of note that every charge refers to a specific accounting document; counts 1-7 refer to a computer add list, counts 8-15 refer to a weekly summary sheet. He also records at para [18]:

> "It is of some moment that both of the items specified above were automated documents created by the Horizon system."

[12] A further point that is raised by Mr Henry and reiterated by Mr Maloney is that prior to trial the defence solicitor obtained a report from a forensic accountant. We have considered this report which is contained in the Booklet of Appeal. It sets out a summary of the issues in the case and, in particular, the expert report sets out a number of queries about the evidence in the case. Mr Henry describes the import of this report thus:

> "The report is explicit in putting the reliability of the Horizon system in issue and it comments on the lack of records made available by Post Office Ltd and Fujitsu, the destruction of certain documents before trial and the limitation of the documents that were actually provided."

[13] Clearly, some logs were provided to the defence accountant but they were limited and did not contain all of the information the accountant wanted. The accountant also refers to requesting other records that he was informed had been

destroyed before his request was received. In the conclusion section the author of the accountancy report stated:

> "Our review has been restricted by the fact that the transaction logs which detail all entries to the system are not available. These logs record transactions but also record user IDs which show who has keyed each entry. The usefulness of these reports is reduced significantly by the fact that individual vouchers cannot be traced through to individual entries on the log and therefore cannot be traced in individual user IDs. However, we cannot comment further on whether a review of the full available logs may have assisted our investigation in identifying recurring patterns in relation to the entries identified."

[14] The failure to retain the relevant records and the failure of the investigators to obtain them in the knowledge of what they were investigating has led to a situation where an abuse of process application could not be made during the trial. There are other matters referred to in the report which it is not necessary to dilate upon. However, it is clear that the expert refers to a number of causes of the discrepancies raised against the applicant, namely poor bookkeeping and controls, ongoing inaccuracies of the computerised system, a combination of these factors and references are clearly made in the report on the integrity of the computer software itself. Therefore, it seems clear to us, as Mr Henry accepts, that the expert report placed the reliability of the Horizon evidence in issue. That being the case, disclosure of relevant problems within the system was required but no such disclosure was provided. This issue is emphasised and reiterated by the fact that the defence statement has now become available and clearly also puts the issue of the software systems in play and requests specific disclosure of the relevant information.

[15] In light of the above we consider that it is proper to allow for an extension of time. In the circumstances of this case we consider that leave to appeal should be granted. The conviction does leave us with a significant sense of unease and should be quashed. The reasons why this conviction is unsafe are well outlined in the arguments but summarised in particular, at para [43] of the PPS argument. There the PPS concedes that the test devised by Lord Justice Holroyde in *Hamilton and others* and repeated in later authorities is satisfied in the circumstances of Mr McLaughlin's appeal. The Horizon evidence was an essential component of the prosecution case in the court below and a clear disclosure obligation went unfulfilled unbeknown to the prosecutors with carriage of the case. That failure was material and consequently there was a breach of the appellant's article 6 right to a fair trial pursuant to the Convention.

[16] Accordingly, we consider that this appeal succeeds. Applying the law to the particular circumstances of this case the inevitable conclusion is that the conviction should be quashed. We note in the skeleton argument that there is no request for a

retrial which is entirely proper in the very unfortunate circumstances which pertain in this case. Given the length of time that this matter has been pressing it is important that this matter has been brought to a conclusion for the applicant. We commend all counsel for the expeditious way in which this case has proceeded and for the high quality legal arguments provided to us. We also note that a public inquiry has been established in relation to these matters.