



THE
NOTTINGHAMSHIRE
LAW SOCIETY

KEVIN DE SILVA MEMORIAL LEGAL ARTICLE COMPETITION 2024



What lessons should the legal profession take from the Post Office Horizon IT enquiry?

Title: Broken System, Broken Lives: The Digital Deception

When faulty technology shatters lives, the legal profession must confront hard truths about the justice system. Important lessons arise from exposing the dangers of unchecked technology and protecting the innocent.

The Post Office Horizon IT scandal is one of the most significant miscarriages of justice in recent UK history. This story has shocked both the public and the legal profession. The scandal arose when more than 900 sub-postmasters and postmistresses were wrongly accused of fraud, theft, and false accounting between 1999 and 2015. The errors in the Post Office's Horizon computer system offer crucial lessons the legal profession must acknowledge.

Scrutinising Expert Evidence: Why it's important

Part 19 of the Criminal Procedure Rules (CPR) in England and Wales provides a framework for handling expert evidence. The use of expert evidence must be "objective and unbiased," implying that the evidence must be reliable.

However, the primary evidence presented to the courtroom during these trials was computer-based. Technology is not error-free, and with the courts in these cases mainly accepting the computer-based evidence without sufficient challenge or examination, meant under Part 19 CPR, the evidence should not have been admitted since the foundations were not legitimate.

This is supported by *Hamilton & Ors v Post Office Limited* (2021) EWCA Crim 577, in which the Court of Appeal quashed the convictions of 39 sub-postmasters, acknowledging that the reliability of the Horizon IT system had been improperly assumed. The court of appeal criticised the failure to investigate the system's flaws thoroughly and found that the prosecutions had relied too heavily on unchallenged computer evidence. The judgment stressed the need for a robust approach to expert evidence, particularly when the evidence is highly technical and not easily understood by laypeople.

Ensuring Fairness: Access to Justice and Representation

Article 6 of the European Convention on Human Rights (ECHR) guarantees the right to a “fair and public hearing”. This includes access to free legal aid “when the interests of justice so require”, as outlined in Article 6(3)(c) ECHR.

In this case, many sub-postmasters lacked the financial resources to effectively challenge the accusations they faced against them, particularly after having to repay extortionate fraud fees they were accused of. Consequently, many defendants were forced to represent themselves against complex and technical charges, creating an imbalance and subsequently, unfair trial. Tragically, this led to Martin Griffiths, one accused sub-postmaster, taking his own life, while another accused sub-postmistress, Saman Kaur, attempted suicide.

Sir Wyn Williams, Chair of the Post Office Horizon IT Inquiry, emphasises the devastating impact on human lives when individuals are left to navigate such complex and technical accusations without legal representation. The legal system must implement systematic changes to ensure better access to justice and support for those facing such serious charges.

Navigating the Fine Line: The Impact of Prosecutorial Discretion

Prosecution Discretion includes deciding what charges to bring and whether to offer a plea deal. In this case, The Post Office offered reduced charges if the accused accepted there was nothing wrong with Horizon.

In *R v Maxwell* (2010) UKSC 48, the Supreme Court ruled that if prosecutorial misconduct leads to unfairness, the proceedings can be stated as an abuse of process. However, even though the Post Office acted as the investigator and the prosecutor, no questions were raised at trial regarding the fairness of allowing such power to a single entity. As a result, over 900 miscarriages of justice were recorded because the trial for those accused was compromised.

From this, the legal profession must recognise the critical need to separate investigative and prosecutorial functions. Concentrating these roles within a single organisation, especially one with a vested interest in the outcome, poses significant risks. The legal system must guard against conflicts of interest, ensuring prosecutorial decisions are made independently and impartially, particularly in highly technical cases.

Conclusion: A Call for Systemic Reform

The Post Office Horizon scandal is a significant reminder of the severe risks involved in unchecked technology and concentrated prosecutorial power in Criminal Cases. It

exposed systemic failures in the legal system, particularly regarding the unquestioned reliance on expert evidence and the lack of access to justice for those accused.

The wrongful convictions of hundreds of sub-postmasters and the devastating impact this had on their lives highlight the urgent need for reforms. The legal professional must learn from this tragedy by safeguarding against conflicts of interest and ensuring justice is both accessible and impartial, especially when the evidence involves complex technical issues. Only through these changes can the public regain trust in the judicial system and know that such miscarriages of justice will be prevented.

Ultimately, the Horizon scandal calls for a recalibration of the balance between technological advancement and human rights in the courtroom.

KEVIN DE SILVA
MEMORIAL LEGAL
ARTICLE
WINNER 2024

—◆—
Elizabeth Cole
Gateley Legal



THE
NOTTINGHAMSHIRE
LAW SOCIETY



Nottinghamshire Junior
Lawyers Division

