



NEWS RELEASE

8 NOVEMBER 2022

APPLICATIONS OF FORMER POST OFFICE SUBPOSTMASTERS

The Scottish Criminal Cases Review Commission (the Commission) has referred today the following cases to the High Court of Justiciary for determination:

- Aleid Kloosterhuis
- Anne Quarm on behalf of William Quarm (deceased)
- Susan Sinclair
- Colin Smith
- Judith Smith
- Robert Thomson

The five former Post Office subpostmasters (SPMs) and Mrs Quarm are now entitled to appeal against the convictions for crimes of dishonesty arising from their role and Mr Quarm's role as an SPM at Post Office Ltd (POL).

Aleid Kloosterhuis pled guilty in 2012, at Campbeltown Sheriff Court, to one charge of embezzlement. The court sentenced her to 12 months' imprisonment.

William Quarm pled guilty in 2010, at Lochmaddy Sheriff Court, to one charge of embezzlement. The court imposed a community service order requiring 150 hours of unpaid work.

Susan Sinclair was convicted in 2004, after a trial at Peterhead Sheriff Court, of one charge of embezzlement. The court sentenced her to 180 hours' community service.

Colin Smith pled guilty in 2013, at Dunfermline Sheriff Court, to one charge of embezzlement. The court imposed a community payback order requiring 180 hours of unpaid work.

Judith Smith pled guilty in 2009, at Selkirk Sheriff Court, to one charge of fraud. The court admonished her.

Robert Thomson pled guilty in 2006, at Alloa Sheriff Court, to one charge of embezzlement. The court imposed 180 hours of community service and a compensation order of £5000.

The Commission has sent the statements of reasons for its decisions to the High Court. It has sent copies to the Lord Advocate and the Crown Office and Procurator Fiscal Service (COPFS). It has sent a copy of its decision in each case to the respective SPM and Mrs Quarm.

The Commission is not, by law, entitled to publish its statements of reasons.

Given the public interest in this matter, the Commission has set out below statistics concerning the “Horizon/Post Office” applications to it as well as brief summaries of the background to the cases and the Commission’s underlying legal analysis and conclusions.

Announcing the decision today, the Chairman of the Commission, Bill Matthews, said:

“The Commission plays an integral part in the criminal justice system in Scotland, and is committed to addressing potential miscarriages of justice. Our function is to examine the grounds of review and to decide whether any of them meet our statutory test for a miscarriage.

The cases we have referred today to the High Court are exceptional in the Commission’s caseload as each one is founded upon the operation of the Post Office’s computer system, Horizon, and the conduct of Post Office Ltd.

We have issued detailed statements of reasons which address all of the relevant grounds. It is for the High Court to decide whether to quash the convictions of the individuals concerned.”

Michael Walker, the Commission’s Chief Executive, said today:

“These cases posed significant challenges for the Commission. Similar cases have been litigated in England and Wales, and lengthy decisions and voluminous papers exist in relation to those court actions. We were required to consider that information and to obtain materials relevant to the six cases that we are referring today.

I thank our investigating team for their expertise and thoroughness.

Our role in these six cases now ends – it is for the appeal court to decide whether any miscarriages of justice occurred.”

This news release should not be treated as forming part of the Commission’s decisions to refer these six cases to the High Court.

Notes for Editors

Applications

The Commission received in spring 2020 its first “Horizon” applications – i.e., cases said to have been affected by the POL’s computerised accounting and sales system, Horizon.

The Commission received 12 such applications; it was left with 11 to review after one person withdrew their application.

POL had initially provided the Commission with the names of 73 people whose convictions in Scotland may have relied upon Horizon evidence. The Commission had traced and written by recorded delivery to those individuals (or their next of kin).

The Commission is currently reviewing five cases. It has not yet taken a final decision in each of those cases.

Background

In 2000 POL began to roll out Horizon in the branches of its network run by SPMs.

From the outset numerous SPMs experienced difficulties with Horizon. Many SPMs were prosecuted using data gathered from Horizon.

A group action of SPMs in the civil courts in England culminated in 2019 when the court released two judgments. The court concluded that between 2000 and 2017 Horizon was not “robust”. This led POL to pay compensation to most claimants.

In 2021 the (English) Court of Appeal quashed numerous criminal convictions in cases in which POL had relied upon Horizon evidence. The Court of Appeal held that failures in disclosure by POL deprived the appellants of a fair trial and that the actions of POL amounted to an “affront to justice”.

There is now a consensus among various agencies about the flaws in Horizon.

A significant point of distinction between the prosecution of cases in Scotland and those in England and Wales was the involvement in Scotland of COPFS as prosecutor. In Scotland POL is a “specialist reporting agency” which investigates crimes against the post and reports them to COPFS. In England and Wales POL was the prosecutor.

Legal Analysis

The applicable law in Scotland differs from that in England.

The grounds of review that the Commission considered in the six cases depended primarily upon whether the accused pled guilty.

In cases in which they did not, the Commission considered whether a miscarriage of justice may have occurred as a result of the fresh evidence that is now available about Horizon. In cases in which they did plead guilty, it considered the law on the withdrawal of guilty pleas. In both cases, it also considered whether the process might be said to have been oppressive.

Conclusions

The Commission concluded that the new information about Horizon would have had a material bearing on a critical issue at Susan Sinclair’s trial, which is to say the shortfall of funds at the Post Office branch where Mrs Sinclair worked.

The Commission concluded that the actions of POL in its investigations could be attributed to the state. It concluded that the Horizon evidence was essential to the proof of the accounting shortfall that constituted the basis of the charge of embezzlement against Mrs Sinclair. It

concluded that her prosecution could therefore be seen as oppressive because the absence of the relevant evidence rendered the trial unfair and because the process was an affront to justice.

The other five SPMs pled guilty to the charges against them. The Commission concluded that they pled guilty in circumstances that were, or could be said to be, clearly prejudicial to them. As regards oppression, it concluded that the Horizon evidence was essential to the proof of the accounting shortfall that led to the charges being brought against them and that their prosecutions were oppressive because the process was an affront to justice.

Accordingly, the Commission believes there may have been a miscarriage of justice in the convictions of Aleid Kloosterhuis, William Quarm, Susan Sinclair, Colin Smith, Judith Smith and Robert Thomson. The Commission also believes that it is in the interests of justice to refer their cases to the High Court for determination.

General Information

The Scottish Criminal Cases Review Commission was established in 1999 by Part XA of the Criminal Procedure (Scotland) Act 1995 as an independent body to review potential miscarriages of justice in Scotland. The Commission has the power to refer cases to the High Court for determination.

Those convicted of a criminal offence in Scotland may apply to the Commission to have their conviction and/or sentence reviewed.

The Board of the Commission comprises eight Members, one of whom is the Chairman.

Frances McMenamin KC is the Commission's Consultant Legal Adviser.

The Commission is staffed by a Chief Executive, a Director of Corporate Services, two Senior Legal Officers, two Legal Officers (one new post pending) and three Administration Staff.

The Commission operates within a framework of statutory provisions concerning the disclosure of information. It will not disclose any further information about these six cases.

For further general information about the Commission, please contact:

Chris Reddick
Director of Corporate Services
SCCRC
Portland House
17 Renfield Street
Glasgow
G2 5AH

Tel: 0141 270 7030 Email: creddick@sccrc.org.uk Website: www.sccrc.co.uk