



A CAUTIONARY TALE IN THE AGE OF ARTIFICIAL INTELLIGENCE AND BLIND RELIANCE ON THE PRESUMED INFALLIBILITY OF TECHNOLOGY

This month, UK television viewers in unprecedented numbers have been watching a heart-wrenching drama. The story: 736 people were falsely accused of fraud, theft and false accounting by a government-owned operation deploying technology that quite simply was not only fit for purpose and that generated errors that had manifold tragic consequences across Britain. The underlying story has become the worst miscarriage of justice in British history. People were wrongly prosecuted, their lives have been turned upside down, with countless lives ruined. All lost their jobs, and many struggled to find new employment. Some declared personal bankruptcy, many lost life savings. Many were fined, and many went to prison. Most, from small communities across Britain who handle savings and pensions for members of their local communities, suffered ruined reputations. Many marriages broke down, and the mental health strain is unimaginable. Most are still struggling to put their lives back together. Some victims have died before they could be vindicated. Four took their own lives. All told, between the 736 prosecuted directly by the organization and another 238 who were prosecuted by other bodies – close to 1,000 Britons were ensnared.

Fiction? Shrouded in secrecy? Not at all – this story has been unfolding for years, with media coverage and a public inquiry. This is the story of how self-employed sub-postmasters and -postmistresses working for the Post Office¹ were falsely accused between 1999 and 2015 of stealing money due to flaws in an accounting system known as Horizon, developed and maintained by Fujitsu. The system was rolled out in 1999 in local branches of the Post Office, and from the earliest days incorrectly showed money missing from local branch accounts. And, yes, there no doubt may be a few who did act fraudulently, but the overwhelming majority were innocent. For this overwhelming majority, no money actually was lost by the Post Office.²

A chronology of the events leading up to the scandal prepared by a supporter of the victims was published in July 2022 – see [Origins of a Disaster](#).

¹ The Post Office is independent of Royal Mail; the latter, which was privatized and is a public company, delivers the mail and parcels, while the former, which is wholly owned by the British government, offers a range of postal, financial and government services.

² The Guardian [set out](#) in layman's terms the failings of the Horizon system: Horizon is a so-called point of sale system that replaced paper-based tills. Horizon was intended to collate all the transactions over the course of a month for each post office and calculate how much cash was expected to be in that post office's till. It was not fit for purpose, with "hundreds" of bugs embedded in the system. For example, one bug caused the system to freeze when cash withdrawals were confirmed, and each time a user would press enter to override the freeze, the system recorded a withdrawal, generating a discrepancy. Another bug wrongly registered duplicate transactions.



The Victims Fight Back

And now the story is all over the news. It took the ITV four-part mini-series on the “telly” (Mr Bates vs. The Post Office, the first episode of which aired January 1) for this miscarriage of justice to finally enter the popular consciousness and for the government to react forcefully. Mr Bates (not the Mr Bates from Downton Abbey) was a former sub-postmaster who was wrongly accused and lost his contract to act as sub-postmaster; he thereafter set up a website to highlight his concerns and to find other victims of Horizon. He and five others (the [Justice for Subpostmasters Alliance](#)) sued the Post Office in 2017, resulting in a High Court [ruling](#) in December 2019 that Horizon contained “bugs, errors and defects.” That ruling prompted the Post Office to [settle](#) with 555 claimants. See [Summary of Issues at Trial](#).

A [ruling](#) by the Court of Appeal was handed down in April 2021 quashing the convictions of 39 victims.

Media Coverage

The story has been known for years. Computer Weekly raised questions about the Horizon IT system beginning in 2009 (after a year-long investigation that uncovered seven victims, and ten years after the system began generating false accounting). According to [reporting](#) in the Press Gazette, Computer Weekly has published 350 stories since 2009 about Horizon (70 of which appeared before the High Court case).

Over the past two years, there have been myriad media reports about the scandal and its human costs, but no groundswell of concern and no public outrage. According to Press Gazette [reporting](#), the BBC in Wales did a follow-up piece to the initial Computer Weekly article, as did Private Eye, the BBC, The Times and the Daily Mail. The Telegraph, Sunday Times, Express and Sun also covered the story for some time. A book, “The Great Post Office Scandal,” was published. Many of the victims (who as noted above were repeatedly told individually that they were the only ones experiencing errors) only discovered there were other victims by reading press reports.

Redress

Two days ago, the British government [announced](#) an unprecedented solution, a solution incidentally that is not without legal complications. Legislation would be introduced to overrule the courts, provide blanket exonerations, and compensate the victims in England and Wales. Westminster reportedly also is considering whether 54 convictions upheld by the Court of Appeals should be overturned.

Two years ago, the Post Office [turned](#) to the government to pay out claims to victims wrongly convicted, failing which it would have become insolvent. To date, offers of compensation totalling more than £138 million across three compensation schemes [reportedly](#) have been made to approximately 2,700 victims, and 93 of the more than 900 convictions have been overturned. Not surprisingly, many have found compensation to have been eaten up by legal fees.



So Many Questions

This is a story that has a modern villain – technology believed by those who developed it or deployed it to be infallible, with the law on the side of the prosecutors. This really is a cautionary tale of what happens when people blindly put their faith in technology. And while it is irrefutable that the technology was to blame, there are a host of related questions about this tragic saga that should be answered. The answers represent significant teaching moments.

For example:

- Why did it take two decades for innocent victims to be recognized as such?
- Why did the Post Office continue to insist the Horizon technology was working, evidence to the contrary notwithstanding and readily ascertainable?
- Why were innocent victims invariably told they were the only ones who were blaming the accounting system and insisting they were innocent?
- Why did government ministers continue to insist there had been no miscarriage of justice?
- Why are private prosecutions tolerated? In Britain, the Post Office is authorized to prosecute without the involvement of the police or the Crown Prosecution Service.
- Why did the justice system not connect the dots? After all, how could it be that close to a thousand employees of the same organization, would commit the same crime, in the same manner at around the same time, and uniformly profess their innocence.
- Why was media reporting insufficient to generate public outrage and why did it take a television drama to do so?
- Why is the Horizon system still in operation?
- Why is Fujitsu still providing IT services to the British government?
- Will corporate executives responsible for destroying the lives of so many be held accountable?
- Will government revisit the privatization of services that has seen significant outsourcing, particularly when there is a technology angle, often with contractors offering significant discounts in early years to lock in contracts for which switching becomes prohibitively expensive and complex.

No doubt now that the floodgates have opened, so too will more evidence come to light of complicity as a miscarriage of justice on this scale needs industrial scale coordination of actors who failed to do their jobs, covered up or worse. The Guardian [reported](#) yesterday that a Post Office investigator admitted during the ongoing public inquiry that victims were offered lighter sanction by lawyers if they agreed to keep quiet about the Horizon system's faults, and he conceded that he had known of the faults "from the beginning" but kept quiet as he had not received orders from the stop to halt the prosecutions. In 2012, that investigator signed a witness statement, drafted by Post Office counsel, to the effect that the "Post Office continues to have absolute confidence in the robustness and integrity of its



Horizon system.” In the hearing, he acknowledged he should have added a line “these are not my words.”

The Metropolitan Police, which has a well-known history of dodging or slow-rolling sensitive investigations, [reportedly](#) is investigating whether any employees of the Post Office should be charged. Former Post Office CEO Paula Vennells handed back the CBE awarded to her in 2019.³

Legal Perspectives

At its core, this scandal represents a fundamental miscarriage of justice, with multiple elements adjacent to the justice system conspiring against the victims. A flawed IT system, an organization that refused to recognize and act on the flaws, let alone back off on the prosecutions it unleashed. A slew of convictions based on flawed evidence and a system unwilling to challenge the presumption that technology is infallible. A prosecutorial system that lacked guardrails, and that enabled the Post Office to proceed with the bulk of the prosecutions at issue, leading to prosecutorial misconduct on a massive scale. A system that caused many to plead guilty to escape more severe sanctions and that so clearly represented systematic “injustice” that led to unimaginable distrust in the fairness of the system by all ensnared in its web. A bunker mentality that refused to admit guilt and impeded wherever possible investigations of the underlying facts and obstructions of justice (largely by refusing to turn over documents).

That culture of lies endured – in 2015, [according](#) to the Guardian, the Post Office told a Commons inquiry that none of the branches, the Post Office or Fujitsu could access transaction data in branch accounts. In fact, the inquiry was advised that Fujitsu staff could remotely access branch accounts.

Courts have already [reversed](#) some convictions, and a [public inquiry](#) was launched in September 2020 (and converted into a statutory inquiry in June 2021, which has the equivalent of subpoena power and can impose sanctions for failure to provide evidence or produce documents as requested under Section 21 of the Inquiries Act 2005). The public inquiry has called for evidence from, among others, postal workers, the government, the Post Office and Fujitsu. That inquiry has moved at a snail’s pace, until now.

³ In a June 2020 [letter](#) to a parliamentary select committee, Vennells seeks to shift the blame. She says she was assured by Fujitsu that the accounting system was “fundamentally sound.” She says she was told by Fujitsu’s then CEO that the system “was like Fort Knox” (records could not be altered remotely without sub-postmaster knowledge).

As for evidence, she claimed that her understanding from conversations with internal and external counsel was that the Post Office applied the same procedures and tests as the Crown Prosecution Service, and as for IT issues, the Post Office often obtained input and evidence from Fujitsu (“which at the time [she] believed was acting properly.”) It was also her understanding that Fujitsu had an obligation to inform the Post Office of IT errors. As the Financial Times [noted](#) yesterday, “faced with glaring evidence to the contrary from sub-postmasters, Post Office management should have exercised far more critical scrutiny.” Moreover, her defense failed “to explain why the Post Office pursued the accused sub-postmasters so aggressively for so long and frustrated their legal appeals.”



It is [widely reported](#) that, not only has the Post Office ignored repeated attempts by the victims to tie their convictions to a faulty IT system, but it has stonewalled; last summer the Post Office [found](#), on the eve a former Fujitsu engineer was to testify, 4,767 documents that it had neglected to turn over to the inquiry. Last year, testimony was postponed at the last minute after the Post Office conceded that its auditors had found over 360,000 emails that should have been turned over. Today, the inquiry [focused](#) on “process failings and potentially ‘deeper rooted problems’ related to Post Office disclosures.” Government ministers, until two months ago, reportedly were clear that blanket exonerations were out of the question.

The Guardian [reports](#) today that counsel for the Post Office has apologized for “inaccurate and misleading” evidence having been submitted to the High Court and Court of Appeal. In a written statement submitted before today’s hearing, counsel conveyed an apology from the Post Office for its failures over the past two years to be fully transparent and disclose documents related to its conduct.

And we now have a proposed legislative solution. But not so fast. Some legal experts are warning that the unprecedented legislative reversal of convictions runs the risk of setting an adverse precedent of interference in the judicial system, where typically an appeal is necessary. This, they argue, upsets the separation of powers, under which Parliament makes the laws, and the courts interpret them and adjudicate if they are breached. The counter argument is that the criminal court system is woefully underfunded, and it could take years for the convictions to be overturned.

Could the courts expedite the appeals to quash convictions? The latter route has the advantage of allowing individual determinations on compensation, particularly where victims had to pay costs (theirs and the Post Office’s). It also has the advantage of giving victims their day in court to seek vindication. But it takes time, and for many time may be running out.

Why Now?

As to why now, the emerging consensus is that the story as portrayed on television has a very basic human dimension people that can relate to. The dramatized version of the miscarriage of justice and the impact on ordinary people (most small town workers) enraged a nation and galvanized a government; over a million Britons signed a petition calling for justice for the victims.

I recall conversations with journalists in London during the voicemail hacking scandal that percolated for years until it exploded in the public consciousness when the phone of Milly Dowler, a teenager who had disappeared and ultimately was found murdered, reportedly was hacked. Until then, the string of celebrities accusing the News of the World had failed to move people.

Cataloguing the Victims

As Marina Hyde noted in her Guardian [column](#), the scandal was not a natural disaster. There are victims because there were perpetrators and, as she noted, unless those perpetrators are



held accountable, not only will these scandals continue but people will continue to feel as if there is one rule for business and one rule for them.

We will never know, but there has since 2016 been a sense that the grievances that animated those who voted for Brexit included the failure of any executives to be held accountable for the global financial crisis. And speaking of which, as has been comprehensively addressed over the years, one of the major drivers of the global financial crisis was a compensation system that rewarded taking risks that ultimately imperilled the relevant institutions and ultimately the financial system. And guess what, media [reports](#) set out that at least two members of the Post Office security team gave evidence to the effect that there were “bonus objectives” for all security team investigators – in plain English, investigators were given bonuses for snaring sub-postmasters and -postmistresses who then were (wrongly) convicted.

Perhaps there is no single villain here, though plenty of blame to go around – the Post Office (rank and file security officers and senior executives), Fujitsu, government ministers. Some say the problem is more fundamental and implicates the entire machinery of government. And Britain has had no shortage of scandals of late, the victims of which continue to await justice – the tainted blood scandal, the Windrush scandal, Grenfell.

Interestingly, none of Britain’s three political parties escapes criticism here. As Guardian columnist Gaby Hinsliff [notes](#), this may explain why none of the parties made it a priority to uncover the full truth and compensate the victims. Justice is now being served thanks to the campaigning of a group of victims and dogged reporting of a few publications and a single [journalist](#).

Concluding Thoughts

As often is the case, more evidence will emerge, whether from the public inquiry, the police investigations or whistleblowers. So, more to come.

With the intense focus these days on AI and generative AI, and the potential for bias in algorithms, we need to be mindful of the dangers of overreliance on technology. Horizon was an IT accounting system; it had no AI elements. But somehow the infallibility of the technology overrode evidence to the contrary and common sense, and innocent people paid a steep price.

Under English and Welsh law, computers are presumed as a matter of law to be reliable unless proven otherwise. The Guardian [reports](#) that, following the 2020 High Court ruling against the Post Office, the British government asked nine legal and computer experts to recommend changes to the legal presumption of reliability; the recommendations were never acted upon.⁴ More on this in subsequent briefing notes.

It is a cautionary tale. The extent to which technology dominates our lives will only increase as the potential of AI is unleashed. We can ill-afford to take humans out of the equation, and

⁴ The presumption of reliability dates back to the common law presumption in favor of mechanical instruments, which has been extant but for 16 years, beginning in 1984. Computers lost the protection in England and Wales under Section 69 (Evidence from computer records) of the Police and Criminal Evidence Act 1984, but that act was repealed without replacement in 1999 (by



that means the end-users as well as the developers of the technology and the institutional governance structures that stand between developers and end-users. This was as much a case of bad technology as it was bad management.

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Section 60 of the Youth Justice and Criminal Evidence Act 1999) based on a Law Commission recommendation, around the time the Horizon’s pilot scheme was launched. Section 69 of PACE reversed the so-called presumption of evidence, putting the burden on the prosecution to demonstrate as a condition of admissibility that the computer was operating correctly. Had Section 69 remained in effect, the scandal might well not have emerged.

One IT consultant and frequent commentator maintains that the Law Commission misunderstood, or misrepresented, the opinions of the various sources cited as being in favor of repeal of the presumption. *See also* “The legal rule that computers are presumed to be operating correctly - unforeseen and unjust consequences” and “‘Computer always right’ law must be revisited to avoid another Post Office scandal.”