

# INITIAL SIFT RESULT SHEET

Case Name:	DEBORAH D'ARCY
CK File Number:	25465
POL Reference:	POLTD/1011/0222
PO Branch:	Beacon Park
Initial Sift Conducted by:	MJS
Initial Sift Conducted on:	9/7/13

1) Was or might Horizon reasonably have been more than just the information provider?

Details:

Case referred to monitor conclusion of confiscation proceedings.

However case papers reveal:

In interview she denied taking POL funds but admitted falsifying her BTS for 6 - 7 months. She thought the problems had started after she transferred to Hz online.

Def pl g to fraud by false rep on 23/1/12 and sentenced to SSO by Plymouth Crown Court to SSO 24/2/12.

2) Did the defence raise?

a) Alleged or Implied Horizon failing Yes

b) Alleged or Implied lack of or adequacy of training

c) Alleged or Implied lack or adequacy of Horizon Customer Support. Yes

Details:

On arrival of the auditors Mrs. D'Arcy said that she was 30k short. She had called the NBSC helpdesk on two occasions asking for help but had heard nothing back.



**POST OFFICE LTD – CASE REVIEW**

**R. v. Deborah D'Arcy**

**Plymouth Crown Court**

**Offence**

1. On the 24<sup>th</sup> February 2012 this defendant was sentenced to a term of 12 months imprisonment, suspended for two years, with a 150 hour unpaid work requirement, for an offence of Fraud, contrary to section 1 of The Fraud Act 2006. The single charge alleged that between 1<sup>st</sup> day of August 2010 and the 23<sup>rd</sup> March 2011 she had falsified the figures in the final branch trading accounts for Beacon Park Post Office. The alleged loss was £31,389.38. The defendant pleaded guilty at her PCMH and provided a written basis.

**Case history**

2. The defendant appeared before the Bradford Magistrates Court on the 5<sup>th</sup> December 2011. She gave no indication of her plea, but indicated that no witnesses were required, and the case was committed to Plymouth Crown Court with the PCMH listed, at that time, for the 23<sup>rd</sup> January 2012.

3. The PCMH took place on the 23<sup>rd</sup> January 2012 and the defendant pleaded guilty as set out in paragraph 1

**Prosecution case**

4. The defendant Deborah D'Arcy was during the relevant period the sub-postmistress at the Beacon Park Sub Post Office.

5. On the 23<sup>rd</sup> March 2011 Post Office Limited Auditors attended the Beacon Park Sub Post Office to conduct an audit. On their arrival the defendant

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informed the auditors that she had been expecting them as she was about £30,000 short. The result of the audit found a deficit in the accounts of £31,389.38 – which is the alleged loss to the Post Office. The deficit consisted of a cash loss of £31,700.54, a surplus of £152.57 in the stock figures and a surplus in the postage of £158.59.

6. Post Office Limited investigators were informed and the defendant was interviewed under caution on the 14<sup>th</sup> February 2011 in the presence of her National Federation of Sub postmasters' representative.
7. In her interviews, conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice, the defendant said:
  - She took the post office on on the 18<sup>th</sup> June 2003 and moved into the premises at that point.
  - It was a two position office where she worked with her partner and Theresa Mavin.
  - She said that, whilst they did not know each other's passwords, they had worked under each other's codes.
  - When asked to explain the shortages she explained that they had swapped to Horizon on line the previous August (August 2010)
  - They had shortages from the first week.
  - She phoned the helpline to report the matter but could only get a voicemail – no one got back to her...
  - The losses accrued at £1,000 to £2000 per week.
  - This continued until November when it had become an unmanageable amount...
  - She was still only getting voicemail on the helpline.
  - This continued until the arrival of the auditors. She was putting her house and the Post Office on the market.
  - She was altering the cash on the Branch trading statements each Wednesday "to make it look right."
  - She did not think that the shortages were down to Theresa.

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#### Defence case

8. In interview the defendant indicated that she did not know how the losses arose but that they only started after the switch to Horizon on Line. She complained that the helpline was always on voicemail and that no one got back to her.

#### Discussion

9. Throughout her interview the defendant sought to rely for her defence on what she assumed to be failings on the part of Horizon, coupled with a lack of customer support. I deal with each in turn:

##### i. Horizon

Had the Second Sight Interim report been available to us during the currency of this prosecution it would undoubtedly have met the test for disclosure to the defence – the possibility of a defect with Horizon on Line was squarely raised in interview...

Of equal concern is the report compiled by Helen ROSE, dated the 12<sup>th</sup> June 2013 and dealing with her correspondence with Gareth Jenkins in the Lepton SPSO 191 320 case (see also Spot Report #1). Given what is said by Mr. Jenkins in dealing with Ms. Rose's questions concerning the ascribing of reversals in ARQ logs and their use in court proceedings, this document too would have been disclosable to the defence.. .

##### ii. Customer support

Again the defendant raises firmly the inadequacy of the helpline and the failure to respond to her calls for help. The Second Sight Interim report would have indubitably been disclosable had we been in possession of it at the time.

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### **Safety of Conviction**

10. It is not the purpose of this review, nor of the review process overall, to determine whether or not any particular conviction is unsafe: that decision is reserved to the Court of Appeal only. The purpose of this process is to identify those cases where the material contained within the Second Sight Interim report would have met the test for disclosure as provided in the Criminal Procedure and Investigations Act 1996, the Code of Practice enacted thereunder and the Attorney-General's Guidelines on Disclosure, had that material been known to Post Office Ltd. during the currency of the prosecution and accordingly would or ought to have been disclosed to the defence.
11. In this case I have no doubt that, had we known of those matters identified in the Second Sight Interim report, that material should and would have been disclosed to the defence in accordance with our disclosure duties as prosecutors. For that reason alone we must inform those who represented the defendant and disclose to him both the Second Sight Interim report and the Helen Rose 6<sup>th</sup> June 2013 report.
12. There is a possibility that, upon receipt of this material, the defendant will seek the leave of the Court of Appeal to appeal his conviction. Where a defendant seeks leave the Court of Appeal will, often before the grant of any leave, invite the prosecution to comment upon the application.
13. I advise that, should we be so invited and/or should the defendant be granted the requisite leave, we oppose his the grant of leave and any substantive appeal, on the basis that the conviction may properly be regarded as safe for, amongst other reasons, the following matters:
  1. By her guilty plea she admits having committed the offence of Fraud. I have no doubt that she would have been advised that:
    1. By pleading guilty she was admitting guilt;
    2. She should only enter a guilty plea if she were truly guilty;

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3. She should not plead guilty if she was in fact not guilty;
  4. She should not plead guilty solely or mainly in order to achieve a lesser sentence in circumstances where she was not guilty.
2. The defendant entered a basis of plea on the 23<sup>rd</sup> of January 2012. This basis, which must have been entered on instructions, asserted:
- i) She took on a pasty and sandwich round business which operated from November 2010. This operated at a 75% loss.
  - ii) She lost her own money in this business which had been set up to offset the loss of business in the Post Office Branch.
  - iii) She "took money in the form of cash directly from the Post Office safe to the overall value as outlined in the prosecution case. This was at the rate of about £1000 per week. This money went on basic running costs for the pasty and sandwich franchise.
  - iv) "I accept that I falsified the figures in the trading accounts every month from the end of August 2010 by entering incorrect figures regarding the amount of cash held in the safe over the relevant period."
3. She has therefore admitted, by her basis of plea, the behaviour alleged by the Crown in the amount alleged by the Crown. She will have a deal of difficulty convincing The Court of Appeal that this conviction is unsafe or that the sentence is manifestly excessive. In my view she will have to change her representation even to attempt it.

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### Conclusion

14. This is a case in which, had we been possessed of the material at the relevant time, we should and would have disclosed to the defence the matters identified in the Second Sight Interim report and the Helen Rose's 6<sup>th</sup> June report.
15. Accordingly our duty is now to place the defence on notice of this fact and to serve on them those documents. I advise that we comply with that duty in this case.
16. Should the defendant be granted leave to appeal against his conviction, we should oppose the appeal.
17. Subject to specific instructions to the contrary, I will draft a letter to the defence for Post Office Ltd's approval and, in accordance with your instructions to us, serve that letter and the reports on defence solicitors.

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Harry Bowyer  
17<sup>th</sup> July 2013  
Barrister  
Cartwright King Solicitors