

POST OFFICE LTD – CASE REVIEW

R. v. BALVINDER KAUR SAMRA

Birmingham Crown Court

Offence

1. Balvinder Kaur SAMRA faces seven charges of theft, each charge alleging that between various dates (overall between 1st January 2010 and the 10th July 2012) she stole money from Post Office Card Accounts operated by a number of elderly and vulnerable victims.

Case history

2. The defendant appeared before the Birmingham Magistrates Court on 8th November 2012. She indicated that she would contest the allegations and the District Judge sent the case to Birmingham Crown Court under the new Allocation Provisions.
3. The matter next came before the court for a Pleas and Case Management Hearing at Birmingham Crown Court on the 5th March 2013, when the defendant entered not guilty pleas to all charges. The matter was listed for trial to commence on the 1st July 2013.
4. On the 1st July the matter came before the court for trial, however in light of POL having received information that publication of the Second Sight Interim report the imminent and that it contained criticism of the Horizon system, counsel obtained a Public Interest Immunity certificate preventing disclosure of those matters. In consequence the trial was adjourned for trial to the 21st October 2013. The matter was also listed for a pre-trial Review to take place on the 13th September 2013.

5. Consequently the case is next to appear before the court on the 13th September.

Prosecution case

6. During the relevant period the defendant Balvinder Kaur SAMRA worked at her husband's sub-post office as a counter-clerk, her husband Gurbinder SAMRA being the sub-postmaster of the Hurst Lane, Birmingham sub-post office.
7. Investigators noticed that, during the period 26th August 2010 and 29th March 2012 Mrs. Samra's Horizon I.D. had been used to perform an unusually large number of duplicate Post Office Card Account transactions. During that period it emerged that Mrs. Samra's duplicate transaction count was among the highest in the country. A total value of some £30,350 of duplicate transactions had been conducted under her user ID.
8. Enquiries were made of a number of those holders of Post Office Card Accounts where numerous duplicate transactions had appeared; all confirmed that they had not made duplicate withdrawals from their accounts. I give below a number of examples where multiple duplicate transactions have been conducted on an individuals' Post Office Card Account:

<u>Ch.</u>	<u>No. of transactions</u>	<u>Date span</u>	<u>Total loss</u>
1	5	23/11/2011 – 4/11/2012	£1,650.00
4	5	20/10/2011 – 27/3/2012	£1,050.00
6	6	13/12/2011 – 24/3/2012	£1,300.00
7	4	29/6/2011 – 13/3/2012	£1,200.00

9. An analysis of the duplicate withdrawals showed that in almost every case the second withdrawal had usually been made within one minute of the first. Often the second withdrawal was for a different amount to the first and often that second withdrawal took the total sum withdrawn for the day to the £600 daily limit for withdrawals.
10. Each of the Post Office Card Account holders provided essentially identical accounts as to how these duplicate transactions had occurred. Each in terms said:
"I have been asked to enter my PIN number again as it had not worked the first

time.” “I have been asked to input my PIN again and have been told that it hasn’t worked.”

11. It is to be noted that six of the seven account-holders are aged over 85-years and all are infirm; the seventh account-holder is a younger, disabled person with mental-health difficulties. Accordingly all may be described as vulnerable to such offending.

12. Mrs. SAMRA was interviewed about these matters, the interviews being conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice. The defendant said:

3rd May 2012

- She only ever conducted transactions she had been asked to conduct by customers.
- She could not explain why there were so many duplicate transactions under her Horizon I.D.
- She did not know why it was apparently only the vulnerable who were the subject of these duplicate transactions.
- She had never been dishonest, indeed she was able to cite occasions when she had called the police to the office because she believed that vulnerable customers were being taken advantage of. On occasions she had been correct to do so and had saved customers from crime and loss.

21st June 2012

- She had only done what customers had asked for – if a customer asked for money twice she had done it twice.
- Some customers were a little bit “dithery” with the Pin pad.
- She had not taken any money.

Defence case

13. At the Pleas and Case Management Hearing of the 3rd March 2013 the defendant’s counsel indicated to the court that she would require all complainant’s to attend to give their evidence. The court was told that the defendant’s case was that each witness was either mistaken in saying that they had not asked for a second

withdrawal, or they had forgotten that they had, or was confused. She had only completed the transactions which the customers had asked her to carry out.

14. Further, whilst she has not directly suggested that the Horizon data is wrong, there is an implicit suggestion that, if the complainant's accounts of not having made duplicate transactions is correct, then the fault must lie with Horizon.
15. In a Defence Statement dated the 26th March 2013 the defendant reiterated the defence stated above, referring to each complainant and suggesting that they were either wrong or confused in their accounts of not having asked for or received duplicate amounts of money. It is to be noted that the Defence Statement did not seek to explain two of the more significant factors in the case: that of only the vulnerable falling victim to the duplicate transactions; and of the second of the duplicates often being for a different sum than the first.
16. Again no reference was made to any alleged Horizon failing. Neither has the defendant made any reference to training or back-up.

Discussion

17. In other cases under review it has been said that, in those matters which have not yet reached the trial stage, the purpose of the review was not to determine the merits or otherwise of the defence case, particularly in the absence of a Defence Statement. In this case the situation is different, because the only primary evidence against the defendant is Horizon-derived.
18. That primary evidence in support of the prosecution case is evidence of duplicate transactions conducted through a single User I.D., used by this defendant. Whilst there is evidence from Post Office Card Account holders to the effect that they did not/would not/do not recall having asked for a second withdrawal, that evidence is merely explanatory of the Horizon data: it seeks to explain the data but does not and cannot add any evidential weight to the data itself. The effect of this evidential position is to render the data itself open to challenge, on the basis that, if the defendant is being truthful and the complainant's are correct in their evidence, then

it must follow that the data is unreliable. To this extent the Second Sight Interim report and the Helen Rose report are disclosable to the defence.

19. This is not to say that the only evidence in support of the prosecution case is that of Horizon data and the complainant's possibly unreliable accounts. There are also compelling points to be made about the nature of the complainants themselves and the nature of the duplicate transactions: all complainants very elderly or otherwise vulnerable; almost all of the second, or duplicate, transactions are for sums different from the primary transaction and often take the total withdrawn that day to the daily limit and made within a minute of the first withdrawal.
20. On the basis of this evidence I have concluded that there is still a case to answer for the defendant. That however is not enough, for we are also required to consider what the defence case may be, and how it is likely to affect the prospects of conviction. The finding that there is a realistic prospect of conviction is based on an objective assessment of the evidence, including the impact of any defence and any other information upon which Mrs. SAMRA might rely. In this respect we should consider whether there are any reasons to question the reliability of the evidence, including its accuracy or integrity.
21. Here, upon receipt of the further disclosure, it is almost inevitable that the defence will question the reliability, accuracy or integrity of the Horizon data. In answer to this we will point to those matters set out in paragraph 19 above as evidence of the reliability of the Horizon data. The real difficulty we have however is the absence of any reliable Horizon expert witness who is able to tell the jury that the Horizon data *in this case* is in fact reliable. For again, all of the points made at paragraph 19 above are Horizon-based save for the fact of the vulnerable witnesses.
22. If we were able to secure an alternative independent witness to deal with the reliability of *this* Horizon data, the defence would be entitled to, and almost certainly would, seek to instruct their own expert to counter that evidence. That would inevitably lead to a further delay in the trial-date, something which, given the ages and infirmities of our witnesses, is almost unconscionable. It is with a

considerable degree of regret that I note that two of our original witnesses have died since the commencement of these proceedings.

23. Upon a close and detailed consideration of all of the factors, for and against, in this case, I find myself driven towards the conclusion that the likelihood of conviction is substantially diminished by the disclosure of the reports referred to in paragraph 18 above. That is not to suggest that the defendant is plainly innocent; that would be a decision for a jury only. However, many guilty people escape conviction because the prosecution is unable to properly rebut what may in fact be an unmeritorious defence. And based upon my extensive prosecution and defence experience, I have formed the view, however unsatisfactory that may be, that in this case we are now unlikely to secure a conviction.

Conclusion

24. The decision to continue or terminate this prosecution lies with POL: the considered opinion of prosecuting solicitors lies with terminating the prosecution. We arrive at this view primarily because of the decreasing likelihood of conviction, coupled with the increasing risk of the loss through illness, infirmity or death of our witnesses.

Simon Clarke
Barrister
Cartwright King Solicitors

22nd July 2013