POL00294520

ROYAL MAIL GROUP (POST OFFICE LTD) – CASE REVIEW

R. v Katherine Jane McQue

Kendall Magistrates Court and Carlisle Crown Court

Offence and Case history

1. On 28th February 2011 at Carlisle Crown Court, this defendant pleaded guilty, on a basis, to one count of Fraud, contrary to section 1 of the Fraud Act 2006. On 10th May 2011 she was sentenced to 9 months imprisonment suspended for two years with a 150 hour unpaid work requirement.

2. Ms McQue first appeared at Kendall Magistrates Court on the 13th October 2009. The case was adjourned to 27th October 2009 and the matter was further adjourned to 22nd December 2009 for committal on which date it was committed to Carlisle Crown Court.

3. The PCMH was listed on the 2nd February 2010 on which date the defendant pleaded not guilty and the case was warned for trial on 19th April 2010.

4. A defence statement was served in manuscript form which disputed theft or any dishonest representations on the Horizon system with intent to make a gain for herself or cause POL a loss. She admitted making such representations to cover the losses. These losses were due to errors on the Horizon system, her incompetence and that of her staff.

5. On the 19th April 2010 the trial was adjourned for the defence to instruct an expert. The trial was refixed for 31st August 2010.

POL00294520

6. This fixture was broken on the 27th July 2010 as the defence had not received their expert report. After this date there was a hiatus in proceedings as the defence sought further disclosure for their expert. The case appeared in court on the 16th November 2010 and was fixed for trial on the 28th February 2011.

7. The experts were asked to liaise before the trial date. The Defence were using an expert called Charles McLachlan and POL used Gareth Jenkins from Fujitsu. There is evidence that the experts discussed the Falkirk bug but the tenor of the letters is that none of the other bugs referred to in the Second Sight Interim Report was discussed – although it may be that these had not come to light by this date.

8. On the day of the trial, 28th February 2011 the defendant pleaded guilty to count 2 (Fraud). The Crown insisted that the basis of plea stipulate that there was nothing wrong with the Horizon system.

<u>Prosecution case</u>

9. The defendant, Katherine Jane McQue was during the relevant period, 22/10/2005 – 08/06/2009, a sub postmaster at Rinkfield Sub Post Office.

10. On 8th June 2009 an audit took place at Rinkfield Sub Post Office.

11. On the date of the audit the auditor found a total shortage of £24,911.96 made up as follows:

    - £26,792.84 (-) identified as a difference in cash figures
    - £166.42 (-) identified as a difference in stock figures
    - £161.47 (-) identified as a difference in postage stamp figures
    - £42.75 (-) identified as a difference in foreign currency figures
    - £923.55 (+) Postage credit owed by customers – paid back by customers during the audit
    - £30.00 (-) Suspense account entry without evidence on hand – redeemed at audit

POL00294520

- £1,357.97 (+) Discrepancy as per office snapshot

12. A transactional correction in favour of the branch was due to be issued reducing the audit shortage by £814.97.

13. Ms McQue, in her interviews, conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice, on the 18th June 2009 said that:
    - She had produced false accounts since August 2008
    - She had not taken any money
    - She had experienced substantial losses at the branch and falsified the accounts by inflating the cash to hide the discrepancy.
    - They did not share passwords at the branch but did have a communal fictitious ID and password ANY001 which they used when they received a number of items to be posted.
    - She balanced the cash and stock each week
    - The branch started having losses about 12 months before the audit. She could not make them good and inflated the cash on hand to enable her to have more time to make good the losses.
    - She knew of the £26k cash figure but not of the shortages in stock, postage and bureau.

Defence case

14. In interview the defendant denies taking POL money but admits that she inflated the cash figure to cover the discrepancies that had occurred over 12 months

15. The defendant served a defence statement which denied taking any POL money and questioned the Horizon system. Two defence expert witnesses were commissioned to investigate this case

POL00294520

16. The guilty plea was entered on the day of the trial.

Discussion

17. In reviewing this case I have only seen the prosecution correspondence file and have not seen the full case papers. I have not seen the original statements nor the interviews or other exhibits and rely upon the officer's report. I have seen both of the defence expert reports. This in my view is sufficient for the purposes of this review.

18. This case was dealt with by way of a guilty plea at the eleventh hour on the day of trial. Until that time the matter looked like an effective trial. The defendant pleaded guilty to Fraud effectively on the basis of her admissions in interview. She conceded that she had concealed the deficit to avoid her contractual obligation to repay the amount of the deficit. The Crown effectively conceded that they could not show that she had taken the money and the Judge in sentencing said that the defendant had not benefited from the fraud (Slightly odd as she had benefited by the time that her fraud had bought her!)

19. The insistence of the Crown that the defendant give Horizon a clean bill of health in her basis of plea was somewhat unattractive and may be something that will embarrass us in due course.

20. In this case there was a direct attack on the figures produced from the audit, a direct challenge to Horizon and a firm assertion that she was not properly trained and did not understand the system. These are all issues dealt with in the Second Sight Interim Report and it is my view that had we been possessed of that report during the course of this case we would have made the defence aware of its contents.

21. This is a case where POL fielded Gareth Jenkins as their expert. There have been worries about his independence as a witness as he is an employee of Fujitsu. There is a suspicion that Gareth Jenkins knew of the bugs highlighted

POL00294520

by the Second Sight Interim Report and did not bring them to the attention of POL until after that Report was published in July 2013. There is a document in POL's possession known as "The Helen Rose Report" which may give some weight to that suggestion.

22. This defendant may well be hard put to found an appeal against either conviction or sentence in this case as she admitted submitting false figures in interview and the sentence is hardly manifestly excessive for this type of case. Nonetheless where a defendant pleads guilty as late in the day as this one, there is always a concern that the plea was tendered in a spirit of pragmatism rather than an acceptance of guilt and such a plea might not have been tendered in this case had the defence had material upon which they could have mounted an attack on the Prosecution's figures. It is my view that we should disclose the Second Sight Interim Report and the Helen Rose Report to those who were acting for Ms McQue in order that they can consider and advise upon her options.

Conclusion

23. This is a case in which, had we been possessed of the material at the relevant time, we would have disclosed to the defence the matters identified in the Second Sight Interim Report during the trial process. We would also have served the Helen Rose Report in light of the extensive involvement of Gareth Jenkins in this case. His conversations with the defence expert may well have been important in the defendant's final decision to plead guilty. It is my view that we are still under a duty to make those instructed by Ms McQue aware of the contents of both Reports and they should be written to accordingly.

Harry Bowyer **10th April 2014**
Barrister
Cartwright King Solicitors