

ROYAL MAIL GROUP (POST OFFICE LTD) – CASE REVIEW

R. v Siobhan Sayer

Cromer Magistrates Court and Norwich Crown Court

Offence and Case history

1. On 18 January 2010 at Norwich Crown Court, the defendant pleaded guilty to a single count of Fraud, contrary to Section 1 of the Fraud Act 2006. On 15 February 2010 the Applicant was sentenced to 40 weeks imprisonment suspended for 2 years with a requirement to complete 200 hours of unpaid work.
2. The defendant first appeared at Cromer Magistrates Court on the 13th August 2009. The case was adjourned to 8th October 2009 for committal. It was adjourned until the 22nd October on which date it was committed to Norwich Crown Court. The PCMH was listed on the 18th November 2009. A not guilty plea to Fraud was entered and the case was listed for trial in the warned list of 25th January 2010. The defendant indicated a guilty plea to Fraud in early January to the court and Post Office Limited and the case was listed on 18th January for that plea to be entered. On 15th February 2010 the defendant was sentenced as above.

Prosecution case

3. The defendant, Siobhan Sayer, was during the relevant period, the subpostmistress at Erpingham Sub Post Office.

4. On 18th January 2008 a business development manager attended the Erpingham Sub Post Office after a request for additional funds had been made as the information on hand showed that the branch had sufficient funds to conduct business. He discovered a large shortage in the cash on hand and an audit was arranged and carried out the following day.
5. On the date of the audit, 19th January 2008, the auditor found a total shortage of £18,997.60 made up as follows:
 - £18,518.57 (-) identified as a difference in cash figures
 - £32.23 (-) identified as a difference in stock figures
 - £445.80 (-) disallowed suspense item
 - £18,997.60 (-) Total shortage.
6. Ms Sayer confirmed the auditors' findings.
7. The auditor noted that the stock was in a mess and the tidying of this made the audit take much longer than would have been expected.
8. Ms Sayer in her interviews, conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice, on the 31st January 2008 said that:
 - She rarely worked in the Post Office and employed an assistant to run the office Monday to Friday and she would cover Saturday.
 - The assistant would do the cash and stock counting for the balance and the defendant would “just go in and roll the balance over.”
 - They both shared the same Horizon log in number
 - In her four days of Horizon training the Horizon codes were not mentioned.
 - She last completed a balance at the end of the last trading period or the one some 3-4 weeks before.

- The balance was out by several hundreds of pounds but not by thousands.
 - About £400.
 - She did not show the £400 shortage. She adjusted the cash.
 - The first 3-4 years she had a good assistant who did the balancing and it never varied by more than a few pounds. When she left the defendant was not able to keep on top of things “and everything just snowballed and basically these accounts seemed to run a bit out of control and I haven’t been able to cope with it. I haven’t managed. I have been burying my head in the sand but I will put my hands up to that completely.”
 - It ran out of control “a couple of years ago.”
 - Her losses had only ever run into hundreds and when she was informed of the audit shortage on Saturday she was blown away.
 - She had never told her assistant of the exact mounts. She had asked if there were any errors she might have done because she was aware that she could not accuse the woman of theft.
 - She had been having regular monthly shortages that didn’t correct themselves.
9. The defendant asked for a break. She was advised to see a GRO. The defendant’s mother said that she was GRO and contact was lost with the defendant.
10. She was interviewed again on 18th September 2008. She was represented by a solicitor and after producing a prepared statement she made no comment to all questions asked.
11. The prepared statement criticised the training that she had been given, She said that she vigorously denied any wrongdoing, she most vigorously denied any dishonest intent and she did not take any Post Office money.

Defence case

12. In interview the defendant seemed to accept false accounting to cover losses. She was not aware of the scale of the losses.
13. This is not a straight forward attack on the Horizon System but the defendant is unable to account for where the losses came from and an attack on the Horizon system can be implied.

Discussion

14. This case was prosecuted on the basis that the defendant hid the losses rather than stole the money. Unfortunately the Judge, having asked the Crown whether there was any evidence of the defendant taking the money and being assured “that must be right”, proceeded to make some unhappy statements in his sentencing remarks.
15. The defence did not help the situation by submitting that the Judge should sentence on the basis that the defendant did not benefit from the offence. The Judge seemed to focus on the amount that the defendant had as being crucial to sentence. A Newton Hearing was canvassed. In the end the whole business was fudged by looking at the Fraud guidelines rather than the Theft guidelines.
16. The learned Judge began well enough stating that the defendant was either taking the money herself or covering up for someone else but then goes on to say that the circumstances of the offence are “a fairly normal offence of fraud, committed by someone in a position of trust, regularly dipping into the till and taking money out of it. It does not seem to me that it is much worse or much better than any other case of somebody in a position of trust taking money regularly from their employer.
17. Prosecution Counsel did not help matters by quoting from the above passages during the Proceeds of Crime Act Proceedings, heard by a separate Judge. He then produces an unattractive argument that the defendant, if she had not

benefited by the amount of the loss had benefited by the extent of her wages during the time that she was falsifying the accounts as Post Office Limited would not have paid her had they known that she was acting fraudulently.

18. The reality of the situation is that in a case such as this where it cannot be proved that the defendant took the money the criminality is that the defendant's intent can be easily ascribed to avoiding their contractual liability for the totality of the loss. The peripheral criminality is that by covering the losses by false accounting or fraud the defendant renders the cause of the loss nigh on impossible to trace and therefore permanent to Post Office Limited.
19. The approach in paragraph 18 would have rendered the obvious fudging at sentencing unnecessary and would have provided no problem for POCA as the defendant's benefit was the avoidance of the contractual debt for the amount of the discrepancy which would have then been the benefit figure.
20. The true position in this case is that the defendant was sentenced appropriately and the POCA figures are what should have been arrived at had the approach in paragraph 18 been followed.
21. The difficulty is that, whilst they arrived at what is, in my submission, the correct result, we have the unattractive feature of the pre-sentence discussions with Prosecution Counsel and the Judge who both appear to concede that there is no evidence that the defendant actually took the money before putting forward the proposition that she had.

The Second Sight Interim Report

22. This is a pre Horizon on Line case but comes within the scope of this review as the defendant was sentenced after January 2010. In this case the defence were asserting that the cause of the losses were unknown (I have seen no Defence Statement or reference to one but have seen correspondence from defence solicitors.) In such a case which had progressed past the PCMH with not guilty pleas entered I have little doubt that had we had the Second Sight Interim Report we would have disclosed it.

Likelihood of Appeal

23. Whilst it is not within the parameters of this review to discuss likely points of appeal it is my view that the guilty plea entered under legal advice is unlikely to be set aside bearing in mind the admissions in interview and whilst the approach to sentence was shambolic the actual sentence and POCA order were appropriate for that plea.

Conclusion

24. 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. The defence solicitors should be written to appropriately

Harry Bowyer
Barrister
Cartwright King Solicitors

27th March 2014