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POST OFFICE LTD – CASE REVIEW

R. v. SEEMA MISRA

Guildford Crown Court

Trial – 11th October 2010 to 21st October 2010
Sentence 11th November 2010

Preamble

This case was prosecuted by the Royal Mail Group and outside counsel instructed directly by RMG Legal Department. Accordingly Cartwright King played no part in this prosecution.

I have not been provided with the prosecution file but have seen a full set of transcripts covering the trial itself; it is from these that I glean such information as is set out below. For this reason I have been unable to establish very much of the pre-trial process as the transcripts do not deal with these aspects of the case. Necessarily therefore, this Full Review takes a different form from the general.

Offence

1. On the 11th November 2010 this defendant was sentenced to a term of 15 months immediate imprisonment for one offence of theft; she also received 6 terms of 6 months imprisonment for 6 offences of False Accounting, all terms to be served concurrently, thus making a total of 15 months imprisonment. The charges alleged that between 29th January 2005 and 14th January 2008 Mrs. Misra stole £74,609.84 from Post Office Ltd. and made false entries in the Horizon accounts to cover the theft.

2. The defendant was also made the subject of Confiscation proceedings under the Proceeds of Crime Act 2002 – I am unable to comment on this aspect of the case as I have not seen any papers relating to that application.

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Case history

3. Seema MISRA faced an Indictment containing 7 counts. Count 1 alleged the theft, over time, of a total of £74,609.84. Counts 2 to 7 on the indictment alleged False Accounting, in that Mrs. Misra had made false entries into Horizon so as to cover the theft alleged in Count 1. When arraigned Mrs. Misra entered guilty pleas to Counts 2 to 7 – False Accounting, and Not Guilty to Count 1 – theft.

4. I list below my understanding of the chronology of this case – there are gaps, for the reasons set out above. In particular I am unable to identify the date of the Pleas and Case Management Hearing: this is an important date because it is likely that this is the date upon which Ms. Misra entered her guilty pleas to counts 2 to 7 (False Accounting) on the Indictment.

8th March 2010	-	Secondary disclosure completed by prosecution.
10th March 2010	-	Legal Argument: Defence apply to Stay Indictment arguing that the prosecution is an Abuse of Process of the Court. Application rejected by Judge on the 12th March. Complaint is lack of disclosure.
7th May 2010	-	Mention re: Disclosure. Defence provide list of "…completely new" disclosure requests.
20th July 2010	-	Defence expert and Fujitsu expert GJ meet.
30th September 2010	-	Defence expert report served on court and prosecution.
11th October 2010	-	Trial commences. Defence again argue Abuse of Process – again rejected.
	-	Application for further disclosure made – application refused by judge.
18th October 2010	-	Defence submit case should be stopped by reason of disclosure failures. Judge rules against.
21st October 2010	-	Defendant Convicted.
11th November 2010	-	Defendant Sentenced.

5. **NOTE: The trial was originally listed to commence on a date prior to the 11th October 2010, however on the day of that first listing and at court the defence for the first time suggested that Horizon was at fault. The defence applied for an**

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adjournment of the trial date and the matter was re-fixed to commence on the 11th October 2010.

6. The defendant then appeared for trial on Monday the 11th October 2010 at the Guildford Crown Court. The trial lasted 9 days. On the 21st October the jury returned a unanimous verdict of Guilty to the single count of theft. The matter was adjourned to the 11th November 2010 for a Pre-sentence Report to be prepared, upon which date she was sentenced as set out in paragraph 1 above.

Defence Statement

7. I have not seen any Defence Statement in this case; however reference is made to two such documents in the trial transcripts. It would seem that a Defence Statement was served early on in the proceedings, in which Mrs. Misra asserted that the entire losses were caused by employees stealing from her in 2006. That Defence Statement contained the names and addresses of the alleged thieves. (Transcript; 18/10/10; p.135a-F). No mention was made of training or Horizon issues.

8. Mrs. Misra later changed her solicitors and a second Defence Statement was served rather late in the day, either just prior to or perhaps on the first day of the first trial listing. That Defence Statement was dated 21st January 2010. (Transcript; 18/10/10; p.125D). In that Defence Statement Mrs. Misra partially resiled from the allegation that staff members were stealing from the office, and instead asserted that her training was deficient; again allegation was made that the Horizon system was at fault for the now unexplained losses.

9. I record such details of the Defence Statement as have emerged from the trial transcripts:

    i. The alleged staff-thefts amounted to "…a couple of thousands of pounds…" (Transcript; 11/10/10; p.47A-B).

    ii. She telephoned the telephone helpline repeatedly and despite these calls the losses increased. (Transcript; 18/10/10; p.123A).

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iii. Training was mentioned but seemingly not criticised. (Transcript; 1310/10; p.30E-G)

10. On the first day of her trial, listed in June 2009, Mrs. Misra raised issues of Horizon fallibility for the first time. She explained in the October trial that she had learned about Horizon failings from an article in Computer Weekly magazine – she read this on the day before her first trail and realised that the "doubling-up" errors described there had happened to her (Transcript; 18/10/10; p.136B). That is why the Judge had postponed that trial.

TRIAL Evidence

11. The defendant Seema MISRA was during the relevant period the SPMR at the West Byfleet Post Office.

Keith NOVERRE – RMG auditor Network Support Field Team

12. On 14th January 2008 Keith NOVERRE attended the West Byfleet Post Office to conduct an audit. He was admitted by a member of staff, Mr A.R., who did not remain for the audit. The SPMR's husband Mr Davinder Misra attended and either he or A.R. provided access to the safe. A.R. then left and Mr Misra remained and observed the count and audit.

13. Mrs. Misra arrived later, at about 10.45am. Upon her arrival she said to the auditor *"...can I speak to you, can I have a word?"* She took the auditor to the back of the office and informed him that the account would be "*...about £50,000 or £60,000 short.*" She went on to explain that a member of staff had taken £89,000 the previous year and that was where the missing cash had gone. She said that other members of staff had also stolen. Mrs. Misra went on to explain that she had been trying to make up the deficit and in so doing had falsified the accounts to make it look as though the books had balanced. She had told nobody at POL because she was concerned that she

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would appear incompetent to POL Management and lose her office. She made no mention of any alleged Horizon failing.

14. Whilst conducting the audit there was found two Remittance Pouches, each containing a slip of paper, date-stamped for the 9th January 2008 and signed by Mrs. Misra (or possibly her husband (Transcript; 12/10/10; p.88H-89A), one suggesting that the pouch in which it was found should contain £13,000; the other £14,000.

Adrian MORRIS – RMG Investigator

15. Attended the West Byfleet office on 14th January 2008 with Keith NOVERRE, auditor. Was given two hand written notes by Mrs Misra, the first signed by her and the second by her husband, the relevant passages of which read:

> **Note 1**
>
> "I confirm in office audit there will be around 60K shortage due to staff theft. It was around 89K and we bring it down to 60 and I want to make an arrangement to clear the balance….The loss is being carried over forward since a year, over last year. We out money in to make it right…..we were 4,000 euros missing. (2) Money transferred to AA was shorter than actual money transferred over. Lottery money was being taken from shop but never entered on Horizon. Even on the shop side was low as well, so we got rid of them. They refused to pay and we kept quiet. We do not want to lose the PO After that as well we received …Lotto error notice when we cleared…."(*sic*) (Transcript; 12/10/10; p.63B-65A)
>
> **Note 2**
>
> "We have around £2,000 short in the stock unit due to staff theft. It was more than what we have now. We did put some money back in this stock unit….this money is taken out by Sarah…."(*sic*) (Transcript; 12/10/10; p. 65A-H)

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Interviews (Transcript; 12/10/10; p.88H-89A)

16. Mrs. Misra was interviewed the same day. Those interviews were conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice. I detail the relevant parts taken from the trial transcripts:

- Mrs Misra reiterated the account given by her to the auditor and contained in her two notes (para.11 above. She added that money transferred to the ATM (by dishonest staff) was also shorter than the actual money transferred over.

- Asked how much was missing when staff left at the end of 2006, Mrs. Misra said that it was around £89,000 to £90,000. She denied emphatically that she had taken any money.

- She repeated that her staff had stolen from her. One, she said, left in February 2006; three others were family members; others at the end of 2006. "*I discovered [the thefts] and sacked them*" she said.

- Mrs. Misra stated that since the Transaction Corrections in 2006, she had no further large discrepancies.

- She had reported a theft of £1,000 to the police.

- She went on to tell investigators that she had put her own money into the accounts so as to reduce the deficit.

- Mrs Misra described how she had falsified the accounts, by remming-out empty cash pouches and then, after balance, remming them in again.

- Of the two pouches found by the auditors, she explained that she had been hoping for family members to "*…come with £27,000, pop them in the bag and send it off to the Post Office.*"

- She explained that the reason why she did not notify the losses was because she believed that her Post Office would be taken away from her.

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Andrew DUNKS – Fujitsu Security Analyst

17. The replacement SPMR had called NBSC on a number of occasions, including:

    a) 26th July 2008, to report an unexplained loss of £1,000 (Transcript; 13/10/10; p.82E-H)

    b) 10th December 2008, Stock Unit rollover error. No fault identified with the software. (Transcript; 13/10/10; p.83G-84D)

18. Produces records from the NBSC and Fujitsu Horizon Helpdesks. The following calls are of interest:

    i. Between 30th June 2005 and 14th January 2008 the Helpline received 105 calls from the West Byfleet office. (Transcript; 13/10/10; p.70C)

    ii. 20th February 2006, in two separate calls Mrs Misra reported an unexplained loss of £6,000. (Transcript; 13/10/10; p.66A; 85D-G)

    iii. 21st February 2006, SPMR stated that the system is showing her as being down every day. Advised by NBSC and advice followed. (Transcript; 13/10/10; p.66E)

    iv. 21st February 2006 (different entry), PM states that last couple of weeks they have had problems with Horizon kit and it is always showing that they are down with money. (Transcript; 13/10/10; p.76F-77H)

    v. 23rd February 2006, the SPMR was getting discrepancies. They have been investigated and the SPMR advised that NBSC will take another look as the stock units appear to be in a mess. (Transcript; 13/10/10; p.66F-G & 77A-79D)

    vi. 16th November 2005, PM…..states [s]he has a discrepancy in the system. Advised to call NBSC. (Transcript; 13/10/10; p.74G)

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vii. Various dates, system rebooted due to failed re-calibrations and transactions.

19. The number, frequency and type of calls received from the West Byfleet office was typical of other Post Offices.

Gareth JENKINS – Fujitsu System Architect

20. Described history and functionality of Horizon.

21. If there was a problem with the hardware installed at West Byfleet, as now suggested by Mrs. Misra, he finds it surprising that the problem did not reoccur afterwards when the replacement SPMR took over from Mrs. Misra. (Transcript; 14/10/10; p.8H-9A)

22. Mr. Jenkins had discussed matters with the defence expert Professor McLACHLAN, who has put forward a number of hypothetical problems with Horizon. These were all theories he wanted examined. Many of those hypotheses referred to process issues such as training and business processes (*e.g.* Transaction Corrections) rather than technical issues with the computer system.

23. There is no evidence to support any of the hypotheses. There is no evidence to suggest that the system is corrupt. Does not believe that there is anything to show that there was any problem with the system and the accounting.

24. Dealt with Callendar Square, Falkirk. This concerned transfers from one stock unit to another. The transferring unit recorded cash leaving but the receiving stock unit did not record the cash arriving. This error was compounded when staff tried to retransfer to correct the problem. This was a very visible problem and was corrected in March 2006. (Transcript; 13/10/10; p.46F-50G) Mr. Jenkins researched the Callendar Square problem and, whilst he did not examine the data logs, determined that the problem was fixed. Sent details of his research and findings to Professor McLachlan.

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25. The cure for the Calendar Square problem was sent to all offices throughout the system in March 2006. West Byfleet received the cure.

26. Looked at all of the West Byfleet transactions from December 2006, which was *post*-Callendar Square, which had resolved in March 2006. Also looked at the West Byfleet event-logs for the period June 2005 to December 2009. The Callendar Square issue as it may have affected West Byfleet was then dealt with in some considerable detail. Importantly, Mr. Jenkins said that he had identified two isolated events similar to the root cause of the Callendar Square problem but not in the tens of thousands of events as had manifested at Callendar Square. (Transcript; 13/10/10; p.51A-52F)

27. In his analysis of just under half a million transactions from West Byfleet, Mr. Jenkins had found no evidence of any computer malfunction, other than the already-mentioned Callendar Square problem.

28. Mr. Jenkins was not asked to look at the period 2005 up to 1st December 2006. He had not been asked to. Professor McLachlan had the same information he had.

29. It becomes apparent in cross-examination of Mr. Jenkins that, whilst he had disclosed material to Professor McLachlan, he had done so on a piecemeal basis, only when asked to do so and very late.

Professor Charles McLACHLAN – Defence computer Expert Witness

30. Professor McLachlan has done as much investigation into Horizon as he could based upon the information made available to him. He would not normally want to undertake such an investigation with as many restrictions he had imposed upon him as he had in this case. Mr. Jenkins has provided every assistance to the Professor, however Mr. Jenkins was limited in what he could do by the fact that he relies upon the post office to instruct him and to provide his time for the benefit of the case. (Transcript; 15/10/10; p.20b-D)

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31. The Professor advanced three hypotheses (Transcript; 15/10/10; p.21A *et seq*):

    i. The User Interface: poor user experience or inadequate design giving rise to poor data entry quality.

    ii. Horizon fails to properly process transactions.

    iii. The wider Post Office operating environment permits externally-entered information to Horizon, giving rise to the possibility of error.

32. As to hypothesis 1, Professor McLachlan was not provided with records of user-interface tests for the Horizon hardware and he was prevented from conducting his own tests. Similarly he had no opportunity to observe and review training processes.

33. For hypothesis 2, the Professor had not had the opportunity to examine logs, defect or change requests although of huge assistance was the opportunity afforded to him by his examination of the Callendar Square information. He was able to speculate that, if the same problems had existed at West Byfleet, they could have been the source of Mrs. Misra's problems.

34. Hypothesis 3; the Professor had no opportunity understand and review the processes for remittances, reconciliation and transaction correction systems of the Post Office environment outside of Horizon.

35. Following that general evidence, Professor McLachlan considered a number of hypothetical transactional errors. Here there was much agreement with Mr. Jennings. He agreed in cross-examination that he had provided his view as to the possible problems with the system. He had been provided with no examples or complaints by Mrs. Misra.

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Mr. VASARMY – Successor SPMR to Mrs. Misra

36. There were one or two minor glitches with the West Byfleet system, but none such that he could say "Hang on a second, I can't identify these losses."

Jonathan LONGMAN – RMG Investigator

37. Attended at audit. Produces CV. Mrs. Misra's personnel file: she held a graduate degree in English from the University of New Delhi. She is also held a qualification in computers and had worked as a computer programmer.

38. When Mrs. Misra took over the West Byfleet office an audited shortage of £1.88 was made good by the previous incumbent.

39. When interviewed on the 14th January 2008 Mrs, Misra said nothing about any problems with the computer at West Byfleet. Nor had she suggested that a reason for the loss was the Horizon system. Had she done so the matter would have been investigated.

40. Mr Longman made enquiries of the police to ascertain whether any complaints of theft had been received from Mrs. Misra or the West Byfleet office. Two reports were identified:

    i. A report from a named employee. This is one of the two employees mentioned in the following report (see below). This employee complained that he had been accused by Mr. Misra of stealing £2,000 and dismissed by Mrs. Misra for theft. (Transcript; 18/10/10; p.6F-H & 18E-H)

    ii. A report by Mrs. Misra dated the 8th April 2006. Investigation showed that this dispute related to monies allegedly stolen by two named (and apparently related) employees. (Transcript; 18/10/10; p.8D-9H; 15F-D)

41. On the 26th October 2006 two Transaction Corrections had been issued to Mrs. Misra in the sum of £23,374.50 and relating to Lottery Transactions. This money was recovered by monthly instalments. £3,043.03 was outstanding on the day of audit and accounted for by the auditors. (Transcript; 18/10/10; p.10E-12G)

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Seema MISRA - defendant

42. Mrs. Misra explained that, from her first day in charge and whilst the Post Office trainer was still present, she was showing losses of £150 or so and accumulating. She made payments in to reconcile these losses. She said that she had told her trainer of the problem and had been advised to keep in touch with her manager, telling her how much she (Mrs. Misra) was losing. This Mrs. Misra did. Within 2½ months she had told her manager TIMIKO SPRINGER that she had put in about £3,000 and that she could not keep going. (Transcript; 18/10/10; p.51D-52G)

43. On 5th August 2005 the office was audited and a shortfall of £3,000 was identified – this she was told to make good. She was also told that, if at any given time she was more than £500 short, she would lose her Post Office.

44. After the audit of the 5th August the losses continued. In early 2006 Mrs. Misra employed the two staff-members who she later alleged had stolen from her. When she realised that they were stealing she believed that all her losses were explained.

45. After the dismissal of the two staff-members the losses continued. By late 2006 they amounted to £89,000. She made some of this up with money from friends and family, in particular from her sister-in-law Omika KALIA, who had loaned her a total of about £22,000. Ms KALIA would transfer money into Mrs. Misra's bank account; she would withdraw that in cash and pay it into the Post Office. On one occasion she paid in £16,000 in this way; that was in 2006. (Transcript; 18/10/10; p.153B-H)

46. The losses continued into 2007. Mrs. Misra described how she falsely accounted so as to hide the losses. She was putting about £100 per day into the office for the whole of 2007. This was in addition to the money provided by her family.

47. In cross-examination Mrs. Misra clarified that the losses occurred every day since she took the office on. (Transcript; 18/10/10; p.89D-90G). She said that she told Timoko SPRINGER that she had caught a member of staff "red-handed", and his relative, another staff-member, and that she had sacked them. Timoko SPRINGER told her to

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cancel their passwords. Timoko SPRINGER did nothing apparently until she arranged the October 2006 audit.

Omika KALIA – Defence Witness, sister-in-law to Mrs. Misra

48. During the period 2006 to 2007 she had loaned Ms Misra a total of approximately £22,000. This because Mrs. Misra was having problems with her Post Office. She usually provided sums of £200, £300 or £400. On one occasion she loaned Mrs. Misra £16,000.

Discussion

49. The sole purpose of this Review is to determine whether or not the Helen Rose report or the Second Sight Interim Report ought to be served on Mrs. Misra's lawyers so as to correct what would have been a failing had POL been possessed of those documents in October of 2010. It is certainly not the purpose of this review to determine whether or not Mrs. Misra's convictions, *i.e.* her guilty pleas to False Accounting and her conviction by jury of Theft are unsafe: that decision is reserved to the Court of Appeal only. Issues of whether or not material might cast doubt on the safety of the conviction does however fall to be considered.

50. In determining the issue reserved to this Review, I have identified two separate strands of the disclosure process: firstly, those matters of disclosure repeatedly raised, and litigated, by Mrs. Misra's lawyers once she had finally sought to rely on alleged Horizon fallibility in June 2009; and secondly, those matters considered in the Helen Rose and Second Sight Reports of 2013. Whilst the first of those topics is, strictly speaking, not in consideration for the purposes of this Review, I will nevertheless briefly comment on the topic. Thereafter I will consider the central part of this Review, that of the two reports.

1. Pre-trial and on-going Disclosure

51. From audit to the day of her first trial Mrs. Misra's defence relied upon the suggestion by her that former members of her staff had stolen from her and that it was these thefts alone which had given rise to the substantial shortages on audit. She asserted indeed

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that two named former employees were responsible for the theft (presumably over time) of £89,000 of Post Office funds. She stated or inferred, by way of written statement, in interview and in her first Defence Statement that, once she had dismissed these employees the losses ceased. In the written statements, in her interviews and in her Defence Statement she was silent on the topics of training and support and of Horizon failings. It was with this defence that Mrs. Misra sought to go to trial in June of 2009.

52. Only the first day of that trial did Mrs. Misra expressly raise the issue of Horizon, she having read the previous day an article dealing with alleged Horizon-related failings. Her trial was adjourned. In January 2010 Mrs. Misra served a second, more detailed Defence Statement (quite why it took her lawyers a further 7 months to produce this document was never made clear). This document too failed to mention any Horizon failings, although on one view it might be said that, in referring to unexplained losses, she was in reality raising Horizon fallibility as a defence. The document did however seek to criticise her initial and on-going training, and referred to having repeatedly called the NBSC Helpline without the losses being resolved.

53. Between the service of that second Defence Statement and the start of her relisted trial in October 2010, a considerable amount of disclosure was sought by Mrs. Misra's appointed expert witness and a substantial quantity was provided, including much relating to the so-called 'Callendar Square' or 'Falkirk' bug.

54. It is correct however to note that not all that was sought was provided, and this "failure" gave rise to a series of applications and hearings on the topic, the outcome of which all supported the stance adopted by RMG. Indeed from a reading of the trial transcripts it is clear that a number of individual judges had heard, and ruled upon, applications both for disclosure of material and for the case to be stopped as an Abuse of Process by reason of a failure to disclose material. In none of these applications did any judge rule in favour of the defence. It is to be noted that the last of the Abuse of Process applications was made at the close of the prosecution case – it too failed. What is equally clear from the transcripts is this: that the defence expert met with and corresponded with RMG's expert throughout the pre-trial process; that material was

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disclosed; and that the RMG expert was assisting the defence expert throughout the course of the trial. Indeed in his evidence Professor McLachlan described Gareth Jenkins as having provided every assistance to the Professor, although stating that he considered that Mr. Jenkins to be limited in what he could do for financial reasons. (Transcript; 15/10/10; p.20b-D)

55. Finally the matter came to trial and it is during this stage that the defence expert's approach became clear: he was not seeking to suggest that Horizon had failed in any express or defined way; nor was he seeking to suggest he had been provided with details of incidents or failures which had occurred under Mrs. Misra's watch. Rather, Professor McLachlan's approach was to set up a series of hypotheses and to invite RMG/Fujitsu to defeat those hypotheses, *i.e.* to prove/disprove a negative. This of course was an impossible task, and so it proved. It resulted in requests for more and more data which, quite reasonably, was not provided.

56. During the course of the trial much time was spent on the evidence of Gareth Jenkins and Professor McLachlan and it is clear from a detailed consideration of the transcripts of the trial that issues of Horizon fallibility, training and support were fully aired.

57. In coming to my conclusion on this aspect of the disclosure process, I have considered Mrs. Misra's failure to raise Horizon as a defence until so late in the day; her inability or unwillingness to offer anything more than a generalised and incoherent indictment of Horizon; the approach taken by Professor McLachlan; and the duties relating to disclosure placed upon the shoulders of any prosecutor. I am reminded of the opinion of the House of Lords in *R. v. H; R. v. C,* [2004] 2 AC 134] where the Committee expressed the view that:

> "The trial process is not well served if the defence are permitted to make general and unspecified allegations and then seek far-reaching disclosure in the hope that material may turn up to make them good."

58. This view neatly encapsulates the approach taken to Horizon by those acting for Mrs. Misra and in particular that adopted by Professor McLachlan. Accordingly I conclude

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that no meaningful criticism can be made of the disclosure process taken by RMG during the pre-trial and ongoing disclosure phases of this prosecution.

2. The Helen Rose and Second Sight Reports of 2013

59. At one point or another during the prosecution and trial process Mrs. Misra raised issues of training, support and Horizon fallibility, all matters considered in the Second Sight Interim report. No criticism was made of Gareth Jenkins at any stage of the proceedings. I deal with each of those three limbs of Mrs. Misra's defence separately.

Training

60. Whilst it is correct to note that no disclosure was sought on the subject and none was provided, prosecution duties of disclosure on this topic do not end there. Where the topic is raised as a meaningful and tenable defence, then disclosure of material which may support the contention that RMG's training was inadequate would meet the test for disclosure. The difficulty here however is that, whilst mention was made in the second Defence Statement of training received by Mrs. Misra (but apparently not therein criticised), the issue was never raised as a defence at all until the third day of the trial, and again in Mrs. Misra's evidence. Having considered the transcripts of this trial and seeking to place myself in the shoes of the then prosecutor, and in particular in considering the way in which this issue was raised and litigated, I have come to the conclusion that the proposition that other SPMR's had complained about the quality and adequacy of their training in the period 2007 – 2013 would not have met the test for disclosure in this case. Further, I find it difficult to see how very much later complaints, made by other SPMR's so long after the conclusion of this trial, can in any way be said to undermine the disclosure position as it then was. The test to be applied now, was described by Brian Altman QC in his General Review document of the 15th October 2013:

> "Although the test for disclosure in past conviction cases is not that under the CPIA, at common law the issue is one of "materiality", which is not a very different thing, ...outside any post-trial period criminal proceedings, ...there remains a common law duty to disclose material that might cast doubt on the safety of the conviction" (*para.127*)

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61. In my view the Second Sight Interim report material, as it relates to training issues, cannot possibly meet that test: even on a generous interpretation I am of the firm view that the Court of Appeal would have no hesitation in dismissing any suggestion that the Second Sight Interim report *might* cast doubt on Mrs. Misra's conviction for theft. As for Mrs. Misra's guilty pleas to False Accounting, there can in my view be no question of doubt as to the safety of the conviction: not only did Mrs, Misra admit the offences but she also went on to describe in detail the lengths to which she went to hide the shortages in her accounts. Finally on this topic, I am of the view that the Second Sight Interim report material, as it relates to training issues, cannot found any sensible appeal against the sentence imposed in this case.

62. The Helen Rose report does not bear on this issue.

Support

63. Again this issue was only raised in the Defence Statement of January 2010. From a reading of the transcripts I have learned that material was served as evidence in the trial relating to the NBSC and Fujitsu Horizon Helpdesks and a witness called to give evidence. The material contained listings of all of the West Byfleet calls made both during and after Mrs. Misra's tenure at that office. Very few of these calls related to losses at the office and those few that did were, accordingly to the logs, resolved. And in any event Mrs. Misra stated that these losses were the result of theft by employees. Assertions that Mrs. Misra had informed Timoko SPRINGER of her problems first arose at trial.

64. Despite the mention of two trainers in the second Defence Statement, JUNAID and MICHAEL, neither of these persons was asked to provide a witness statement or to give evidence. Similarly, whilst it must have been on record that Timoko SPRINGER had been involved as Mrs. Misra's line manager and the person to whom she reported, Ms. SPRINGER too did not provide a witness statement or appear at trial. I find this surprising: all three were persons who might have provided evidence in support of either Mrs. Misra's case or the case against her. It may be that statements were taken and that they did not assist Mrs. Misra; or that they did not assist matters generally (no memory *etc.*). If it was the case that these three potential witnesses were simply not

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asked about these matters then I would identify such an omission as a failing in RMG's approach to the prosecution and particularly as a failing in their duties of disclosure for it might have been that one or more may have been of assistance to Mrs. Misra's case.

65. That issue however is not one related to the matter of the potential disclosure of the Second Sight Interim report. More relevant here is the fact that, despite Mrs. Misra's assertions that she repeatedly asked for assistance from both the NBSC and Fujitsu Horizon Helpdesks, it was plain from the records served that she did not do so. In those circumstances it cannot reasonably be said that there was a failing in support, because in fact, none had been sought. In addition, Mrs. Misra's assertions that she was too afraid to report losses for fear of losing her office are not borne out: rather she did report losses on several occasions, and these reports are borne out by the material served. For all of these reasons and applying the test identified by Brian Altman QC as the appropriate approach, I conclude that, on this aspect of the case, the Second Sight Interim report does not fall to be disclosed now.

66. The Helen Rose report does not bear on this issue.

Horizon

67. Very late in the day, and then only after having accused her former employees of stealing nearly £90,0000 from her, did Mrs. Misra make generalised and incoherent allegations concerning the Horizon system, suggesting that it had, on a daily basis, thrown up unexplained shortages. As it transpired, those allegations failed to concur with both her own reports, to the police and the NBSC at the time, and with the chronology of her shortages. The details of the alleged Horizon failings, generalised, inspecific and unfocused as they were, did not in fact materialise until her evidence at trial, the second Defence Statement merely suggesting that the Horizon system was at fault for the now unexplained losses. Having said that, at no point did Mrs. Misra identify any specific failing in the system, such as disappearing icons; false balances *etc.* That she left to her expert witness Professor McLachlan, who himself merely proffered a number of unhelpful hypothesis and invited RMG to disprove them. None

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of this is to say that the Second Sight Interim report is not to be disclosed: I merely describe the background to the exercise now to be completed.

68. Having considered both Mrs. Misra's case and the details of the Second Sight Interim report I can divine no instance where there is any convergence of similarity of complaint on the issue of Horizon fallibility. It is not the function of the prosecution to respond to general and unspecified allegations and requests for disclosure in the hope that material may turn up to make them good. And in this case I conclude that this is precisely the test to be applied on issues of *post*-trial disclosure. I am also of the view that the Second Sight Interim report does not and cannot cast doubt on the safety of the conviction, not least because the vast majority of matters dealt with in the report *post*-date this trial by several years and those that fit the chronology of this case bear little or no factual resemblance to Mrs. Misra's circumstances. In any event the report is now in the public domain and most likely in the hands of Mrs. Misra.

69. As for the Helen Rose report, that matter goes solely to Gareth Jenkins' knowledge of Horizon concerns arising some 5 years after the events considered in Mrs. Misra's trial, and his credibility as an expert witness in 2013. An analysis of the events dealt with in that report, and the potential that Gareth Jenkins' credibility as a witness *might* be undermined in 2013, does not in my view lead to the conclusion that material which might undermine his credibility now ought to be made available so as to do so in relation to a trial which occurred in October of 2010.

Conclusion

70. For the reasons set out in the preceding paragraphs I advise that neither the Second Sight Interim report nor the Helen Rose report meet the test for disclosure in this case and neither report should not be disclosed to Mrs. Misra's representatives.