

POST OFFICE LTD – CASE REVIEW

R. v. KHAYYAM ISHAQ

Bradford Crown Court

Offence

1. On the 22nd April 2013 this defendant was sentenced to a term of 54 weeks immediate imprisonment for an offence of theft. The single charge alleged that between 14th September 2010 and 9th February 2011 he had stolen the sum of £21,168.64 from Post office Ltd. On the 7th March the defendant stopped his (second) trial and entered a guilty plea to the theft of £17,863.00.

Case history

2. The defendant appeared before the Bradford Magistrates Court on 30th May 2012. He gave no indication of his plea and the Magistrates deemed the case unsuitable for summary trial. The case was adjourned for the preparation of committal papers and the committal hearing took place on 25th July 2012. Prior to the Committal hearing of the 25th July 2012 the defendant's solicitor indicated that the case would be contested, on the basis that there must have been an error in the Horizon accounting system.
3. The solicitor also suggested that he intended to instruct a forensic expert.
4. The matter next came before the court for a Pleas and Case Management Hearing at Bradford Crown Court on the 4th September 2012, when the defendant entered a not guilty plea. He indicated to the court that he intended to instruct a forensic accountant and sought disclosure of Horizon data covering the operational period of the indictment. The matter was listed for trial to commence on the 25th February 2013.

5. Trial commenced on the 26th February 2013 but was aborted on the 27th February by reason of defence counsel's illness. The trial was re-listed to start again on the 6th March and re-started on that date. On the 7th March the defendant stopped his trial and entered a guilty plea to the theft of £17,863.00. The matter was adjourned to the 22nd April 2013 when he was sentenced to a term of 54 weeks immediate imprisonment for an offence of theft.
6. The defendant subsequently sought the leave of the Court of Appeal to appeal against sentence only; leave was refused by the Single Judge on the 20th June 2012.

Prosecution case

7. The defendant Khayyam ISHAQ was during the relevant period the sub-postmaster at the Birkenshaw Post Office, Branch Code 163 306.
8. On 8th February 2011 a member of the Network Support Field Team attended the Birkenshaw Post Office branch in Bradford to undertake a check of the cash. A count of the cash took place and revealed a shortage of £536. The balance snapshot revealed a shortage of £2569.19. A full audit was carried out; this revealed a total shortage in the branch of £21,168.64.
9. Horizon data for the period of 2nd November 2010 to 31st January 2011 indicated that during the relevant period a large number of stock reversal transactions relating to stamp sales had been conducted on Horizon, both under this defendant's own Log-in IDs and that of his clerk Mr. Umair LIAQUAT.
10. It is to be noted that Mr. Umair Liaquat has said in a statement dated 24th June 2011 that:
 - He was trained by the defendant. His was trained only on transactions and had no other responsibilities other than serving customers.
 - He changed his password whenever he was prompted (by Horizon) to do so; he informed the defendant of his new password because he thought that was what he thought he had to do.

- He was never told the defendant's password and never asked for it.
- The defendant completed the daily reports and declared the cash every day. He helped the defendant with the balance only on 2 or 3 occasions. He was never present when the defendant reached the balance figure.
- He helped to count the coin and stamp book.
- The defendant counted the safe content.
- He was never made aware of any discrepancy.
- He had asked the following day if everything was OK and had been told it was fine.
- The defendant never said he had forgotten to count cash.
- He knows nothing of any discrepancy.

11. In response to the auditors questions the defendant said that he had no knowledge of any sale (of stamps) being reversed. He suggested that a relief sub-postmaster may have conducted the reversal transactions: the relief had been using the defendant's Horizon Log-in ID

12. The allegation against the defendant was therefore that he had deliberately and dishonestly inflated stock levels so as to enable him to remove cash to the value of his transactions. By acting as he did he would ensure that less cash on hand would be required to achieve a balance, thus resulting in discrepancies in the cash on hand being hidden.

13. In his interviews, conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice, the defendant said:

- He took the post office on in 2008.
- He worked at the branch on Mondays to Fridays from 9.00am to 10.00am and 4.00pm to 5.30pm and on Saturdays between 9.00am to 12.30pm. His clerk Umair Liaquat worked from 10.00am to 4.00pm on Mondays to Fridays.
- He was "...never shown the back office at all [and] had to learn that from somebody else..."

- The balances always showed a loss of perhaps £20 to £30. In October 2010 there was a loss of £1400 and in January on of about £400.
- He had looked at the transactions to try to find the shortages but was unable to do so.
- He did not telephone the Helpline regarding the losses.
- Every loss he had he contacted Chesterfield.
- He never inflated cash.
- He had never stolen money.
- He sometimes left his clerk to do the balance and he may have made mistakes. On occasion he had found and corrected such mistakes.
- He was unable to explain the shortages: he just went on the figures; they could have been incorrectly done: the stamps were present although they could have been knocked off the sheet. Alternatively others could have stolen from the post office whilst he had been away for a month.
- Sometimes you get an unexplained loss.
- Umair Liaquat never told him his passwords.
- He was teaching Umair Liaquat how to do the balance. Umair Liaquat had on occasions forgotten to count cash. He was present on occasions when a shortage had been identified.
- Initially he would replenish the cash form the safe but as Umair Liaquat's training progressed he would do so himself.
- He was unable to explain the losses.

Defence case

14. In interview the defendant indicated that he did not know how the losses arose and offered a number of speculative explanations.
15. In a Defence Statement dated the 29th August 2012 raised the following assertions:
 - i. The Post Office “Horizon” software/hardware system had in the past on numerous occasions malfunctioned causing difficulties in reconciling sales, receipt and stock figures. The defendant had reported the same to the Post Office helpline seeking assistance but

little or no successful assistance was afforded to him despite the said requests.

- ii. The defendant had of necessity to make certain adjustments by way of “reversals” on the Horizon system so as to ensure the sales, receipt and stock figures reconciled. This was done on the basis of clear malfunctioning of the system (and in accordance with the limited training given to the Defendant by the Post Office in the past and with very little support thereafter)....

16. In his request for disclosure contained within his Defence Statement the defendant sought disclosure of:

- i. All material to the knowledge of the prosecution in existence ...that reasonably supportsthe contention that the Post Office Horizon software/hardware system has proved to be unreliable and/or inaccurate and/or susceptible to malfunction and/or otherwise prone to the production of erroneous results.
- ii. The full resultsof all internal and/or external investigations and/or enquiries and/or reviews ...into the correct functioning of the Post Office Horizon hardware/software system.

17. In an Addendum Defence Statement dated the 20th February 2013 disclosure of material relating to telephone calls to the helpline. He indicated that Horizon would “freeze” and would give inaccurate total figures at the end of trading/balance periods. He had called the helpline some 10 or more times per month. He sought disclosure of details of his calls.

18. A few days prior to the commencement of the first trial (see para.5 above), the defendant served an expert report written by Beverley IBBOTSON of PKF Accountants and Business Advisers. Ms. Ibbotson identified a number of minor audit and stock discrepancies but did not seek to suggest that the underlying

Horizon transactions were not conducted by the defendant, under either his own Log-in ID's or that of Umair Liaquat.

Prosecution response to defence

19. Gareth JENKINS describes himself as a Business Architect employed by Fujitsu Services Ltd. He has worked for Fujitsu Services Ltd. on the Horizon project since 1996 and is regarded as an expert on Horizon. Mr. Jenkins provided two statements in response to the Defence Statements served by the defendant. On the 15th January 2013 he provided an expert report detailing what he described as "...further background information" on the Horizon system. The statement dealt with the operations capability and function of Horizon; operating architecture; and the checks and balances built into and conducted by the system. He concluded that it was his belief that Horizon "...will accurately record all data that is submitted to it and correctly account for it."
20. In his second expert report, dated the 6th March 2013 Mr, Jenkins sought to respond the matters raised in the defendant's Addendum Defence Statement. This report adds little to the case for the prosecution and does not undermine the defence case.
21. Ms. Ibbotson and Mr. Jenkins conducted joint expert talks on the 25th and 26th February and on the 26th produced a joint expert report. That report largely confirmed that both experts agreed that there had been a number of otherwise unexplained reversals on Horizon. Ms. Ibbotson added her concern that, despite requests for disclosure, she had not seen any evidence as to how much physical cash was held at the post office on the date of audit.
22. Notwithstanding the defendant's continued assertions of innocence and his criticisms of Horizon, he pleaded guilty on the 7th March to the theft of £17,863.00, being a lesser amount than that charged.

Discussion

23. Throughout this case the defendant sought to rely for his defence on what he asserted to be failings on the part of Horizon, coupled with a lack of training provided by Post Office Ltd. and a lack of customer support. I deal with each in turn:

i. **Horizon**

I am as concerned by the defendant's repeated assertions as to his perceived failings of Horizon as I am about his very last-minute change of plea. I cannot escape the proposition that, 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; indeed the Defence Statement appears remarkably prescient on the topic.

Of equal concern is the report compiled by Helen ROSE, dated the 12th 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. **Training**

Similarly, that part of the Second Sight Interim report which deals with this topic refers and I arrive at the same conclusion.

iii. **Customer support**

As i. and ii. above.

Safety of Conviction

24. 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.

25. 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 6th June 2013 report.

26. I consider it quite likely 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.

27. 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 his guilty plea he admits having committed the offence of theft. I have no doubt that he would have been advised that:
 1. By pleading guilty he was admitting guilt;
 2. he should only enter a guilty plea if he were truly guilty;
 3. he should not plead guilty if he was in fact not guilty;
 4. he should not plead guilty solely or mainly in order to achieve a lesser sentence in circumstances where he was not guilty.

2. The evidence of Umair LIAQUAT gives the lie to the defendant's assertions in numerous respects. In particular:
 1. the use by the defendant of Mr. Liaquat's Log-in ID and the lies told by the defendant as to whether or not he knew Mr. Liaquat's password is compelling.
 2. In his interviews the defendant is at pains to explain that he does not know how the shortages arose. His Defence Statement however admits his use of transaction reversals, having been forced to do so on the prosecution evidence.
 3. Notwithstanding his assertions as to lack of appropriate training, he still managed to run his post office for perhaps two years without incident.

Conclusion

28. 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 6th June report.
29. 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.
30. Should the defendant be granted leave to appeal against his conviction, we should oppose the appeal.
31. 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.