

**POST OFFICE LTD – CASE REVIEW**

**R –v- SCOTT RICHARD DARLINGTON**

**Chester Crown Court**

**PRE-HORIZON ON-LINE CASE**

**Offence and Case History**

1. On the 23<sup>rd</sup> February 2010 at the Chester Crown Court before HHJ Dutton, this defendant was sentenced to 3 months imprisonment suspended for 12 months. He was also ordered to carry out 120 hours unpaid work. He was charged on an indictment containing 5 counts:
  - a) False accounting on or about 21<sup>st</sup> August 2008 in that he falsified a Final Branch Trading account for Alderley Edge Post Office for the period ending 21<sup>st</sup> August 2008 by representing that the amount of cash in hand was greater than the true figure;
  - b) False accounting on or about 16<sup>th</sup> October 2008 in that he falsified a Final Branch Trading Account for the period ending 16<sup>th</sup> October 2008;
  - c) False accounting on or about 19<sup>th</sup> November 2008 in that he falsified a Final Branch Trading Account for the period ending 19<sup>th</sup> November 2008;
  - d) False accounting on or about 17<sup>th</sup> December 2008 in that he falsified a Final Branch Trading Account for the period ending 17<sup>th</sup> December 2008;
  - e) False accounting on or about 14<sup>th</sup> January 2009 in that he falsified a Final Branch Trading Account for the period ending 14<sup>th</sup> January 2009;
2. Although a confiscation timetable was set, no POCA proceedings were pursued for reasons which I will outline in the 'Discussion' part of this advice. The defendant was ordered to make a contribution towards prosecution costs of £410.10.

3. The defendant was born on the GRO and was aged 46. He was summonsed and appeared before the Macclesfield Magistrates Court on 30<sup>th</sup> September 2009. The magistrates declined jurisdiction and he was committed to the Chester Crown Court on the 30<sup>th</sup> November 2009 for a Plea and Case Management hearing on the 5<sup>th</sup> January 2010. On the 1<sup>st</sup> February 2010 he pleaded guilty to all 5 counts on the indictment. The case was adjourned for sentence to 23<sup>rd</sup> February 2010 when he was sentenced as outlined in paragraph 1 above.

#### **Prosecution case**

4. The defendant had been sub postmaster at Alderley Edge Sub Post Office for 4 years, a 2 position counter located within a gift shop. On 12<sup>th</sup> February 2009 as part of 'Operation Hogmanay' (branches identified as holding too much cash), officers arrived to perform an audit at 0830 hours and the defendant arrived at 0850 hours. He was present when the officer printed out the previous night's cash declarations. Before he started to count the cash, the defendant admitted to inflating his overnight cash holding (ONCH) by around £40,000 each time he entered a cash declaration since around Christmas time, as he thought an error had been made by one of his employees whilst inputting an 'automated payment'. He said he was hoping to receive a 'transaction correction notice' for around this amount.

The audit resulted in a shortage of £44,508.46. This was made up as follows:

- £42,767.79 cash deficiency;
- 0.27 cheque shortage
- £1969.35 stock deficiency
- £3.91 postage surplus
- £25.04 foreign currency surplus

- £200 'other' surplus

5. The defendant was interviewed under caution on 12<sup>th</sup> February 2009. He said as follows:

- He was responsible for completing the daily work and the Branch Trading Statements at the end of each month;
- There are 3 part time assistants working there.
- He confirmed that he told the auditors that he added £20,000 to the £20 notes and £20,000 to the £10 notes when declaring the cash;
- There must have been an error in a transaction which resulted in the shortage;
- The shortage began at £9,000 in September 2008, increased to £16,000 over that week.
- The loss once again increased by a further £11,000 to £27,000 and nothing was found to explain the shortage;
- He did not inform anyone of the discrepancies as he was afraid the money would be taken out of his salary
- He admitted falsifying the Branch Trading Statements.
- He was shown trading statements for 5<sup>th</sup> March – 9<sup>th</sup> April 2008, 12<sup>th</sup> November – 10<sup>th</sup> December 2008 and 8<sup>th</sup> July – 12<sup>th</sup> August 2009 and confirmed that all those Final Trading statements were false accounts;
- He had been false accounting since 5<sup>th</sup> March 2008 until the audit on 26<sup>th</sup> August 2009.

6. Examination of the defendant's bank statements showed unexplained cash deposits between October 2008 and January 2009 amounting to £9,450. The defendant explained the deposits variously as payment for external audio-visual work, and some as shop takings.

7. The defendant admitted that he paid his staff cash from the shop till with no wage slips. One of the staff members when interviewed said that she had been paid cash out of the Post Office till.

**Defence case**

8. The defendant pleaded guilty to all charges on the indictment but on the basis claimed through his counsel that there was no loss sustained by the Post Office. The judge was told that the prosecution did not accept this basis and that the prosecution would ask for a *Newton* hearing to resolve this issue.

**Discussion**

9. The defendant raised, by inference, what he would call an 'error' in the workings of the HORIZON system when he made reference to the 'disappearance', over a period of time, of £40 000. He pleaded guilty on the basis that he did not derive any benefit from the loss and that the Post Office did not sustain a loss. This basis was not accepted by the prosecution and they called for a *Newton* hearing. However, the judge declined to order a hearing as 'resolution of the issue would involve a very great delay and such delay would be inappropriate and unfair on the defendant' (Counsel's advice dated 12<sup>th</sup> April 2010 para 2). In addition, the prosecution 'could not produce' accounts in legible form which was required to prove the loss (advice as above para 1). The judge sentenced on the basis that no loss was occasioned. No order was made under the Proceeds of Crime Act 2003 as a result.
10. Although the 'purported unexplained errors' on the HORIZON system by inference raised by the defendant amount to £40,000 over a period of 5 months, the defendant admitted that his system of accounting, including paying his staff wages, did not follow proper office procedures. A staff member stated that she had been paid regularly from the Post Office till.
11. This defendant admitted false accounting from the beginning and pleaded on the basis that there was no loss to the Post Office and was sentenced on that basis. In this, it seems to me, he was very lucky in that

there was ample evidence, in the form of evidence of other staff and unexplained /badly explained deposits into his bank accounts to show that he had been taking and using POL funds for his own ends and had this case been differently handled he would probably have faced and been convicted of counts of Theft. In the event he pleaded to false accounting on his own basis and admissions and I cannot see how he could possibly be assisted by any disclosure of the issues raised in the Second Sight Interim Report.

**Conclusion**

7. This is a case where there is no requirement to make further disclosure to the defendant's lawyers.

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**Harry Bowyer**

**8<sup>th</sup> September 2014**

**BARRISTER**

**CARTWRIGHT KING SOLICITORS**