

**POST OFFICE LTD – CASE REVIEW**

**R. v. GRANT IAN ALLEN**

**Chester Crown Court**

**Offence**

1. On the 24<sup>th</sup> January 2013 this defendant was sentenced to Community Penalty of 12-months duration requiring that he complete 200 hours of Unpaid Work. No order for costs was made and no Confiscation Proceedings were pursued. The single charge of Fraud by Misrepresentations contrary to s.1 of the Fraud Act 2006 alleged that between 1<sup>st</sup> April 2010 and 7<sup>th</sup> February 2012 he had made representations to Post Office Ltd. that the Winsford Post Office had more cash on the premises than was actually the case, thereby resulting in a shortage of £11,705.

**Case history**

2. The defendant appeared before the West Cheshire Magistrates Court on 30<sup>th</sup> April 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 matter was committed to the Chester Crown Court for a Pleas and Case Management hearing on the 10<sup>th</sup> December 2012. For reasons which are not immediately clear, that hearing was moved to the 24<sup>th</sup> January 2013.
3. The matter next came before the court for a Pleas and Case Management Hearing at Chester Crown Court on the 24<sup>th</sup> January 2013, when the defendant entered his guilty plea, albeit on a limited basis. That Basis of Plea stated that he

was unable to account for the shortage at his post office but that he was guilty of covering the matter up: accordingly he was guilty of the fraud charged.

4. The Judge indicated that he was sentencing the defendant on the basis set out in his Basis of Plea.

**Prosecution case**

5. The defendant Grant Ian ALLEN was during the relevant period the sub-postmaster at the Winsford Post Office, Winsford, Cheshire. The office was operated through a franchise agreement between POL and Allco Ltd, of which Mr. Allen had been a director. He employed a number of staff at the branch, all of whom used individual stock units.
6. An audit was conducted on the 8<sup>th</sup> February 2012. Shortly after it commenced, Mr. Allen admitted to Mr. Cross, the auditor, that his stock unit would be about £10,000 short. He told Mr. Cross that, by reason of his financial difficulties, he had been unable to make good the shortages and so had inflated the cash on hand so as to hide the shortage. He said that he had hoped for an “over scale” payment from POL to make good these shortages. He refused to sign a record of conversation (RC/1) to this affect but later, in his PACE interview, confirmed that the detail of the conversation had been correctly recorded by Mr. Cross.
7. The audit identified an overall loss of £17,811.49. Of this, £4,645.24 had previously been settled centrally, although this sum remained unpaid. Mr. Allen explained that it related to costs incurred during branch relocation and was a debt due to the building contractors ROMECE. He said that he was in dispute with ROMECE over the quality of the work conducted. In addition to that shortage, the defendant’s own stock unit KK was found to have a cash shortage of £11,705; further lesser shortages were identified in the postage, cash and stock spread across the other 8 stock units. These shortages were deemed not to be attributable to the defendant.

8. Mr. Allen was interviewed on the 19<sup>th</sup> April 2012 under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice. He declined any legal or 'friend' representation. He told officers:

- he had taken the Post Office on in November 2009
- He had relocated the office in March 2010; the cost of that relocation amounted to some £100,000.
- In the first 4 weeks following relocation there had been a number of wiring problems affecting the Horizon terminals; he believed that this meant Horizon was not Polling data.
- It was during this non-Polling period that a discrepancy of £3,000 arose and which he could not explain, other than to suggest it was a result of the wiring problems.
- He had not made good that loss, believing that a transaction correction would resolve the issue in due course.
- In each subsequent balancing period, anything other than insignificant discrepancies of £50 or less were added onto this original £3000 loss.
- All such discrepancies were transferred from other stock units across to his stock unit, he giving the other stock units the case. In that way all of the shortages would appear in his own stock unit.
- He had inflated his cash on hand to achieve a balance, putting the approximate amount of the shortage onto the unusable notes line. He did this between April 2010 and February 2012. He did not know that this was a criminal offence – he believed it to be a breach of his contract.
- He could not make ends meet. He was “...screaming at the Post Office telling them he could not afford to pay the rent and sent accounts and facts and figures regarding wages etc to try to get them to look at it all..... ...screaming out for over a year for help. Support from Post Office, Area Manager comes once a year....”
- He had been an area manager for Costcutters and a Business Development Manager for Bookers. Thus he had a lot of dealings with POL and with those suspended from post offices.
- During migration to Horizon on Line in 2010 he had reintroduced cash into his stock unit to so as to achieve a balance.
- He denied stealing any money from the Post Office.

- He denied knowing that falsifying the accounts was a criminal offence, believing that it was merely a contractual matter. *“I didn’t think I had broken the law, you have pointed out to me that what I did do was steal and illegal was still illegal, I wasn’t aware of that at the time but you’ve made me aware of that since. I want to pay the money back.”*
  - He confirmed the Record of Conversation (RC/1) as correct.
  - He admitted the figures in the 6 Branch Trading Statements he was shown were inflated, by him.
  - He was not in a position to repay the money
9. The allegation against the defendant was therefore that he had deliberately and dishonestly inflated stock levels so as to enable him to hide shortages on his stock unit.

#### **Defence case**

10. Mr. Allen could not explain the shortages; they had accrued over all eight of his office’s stock units and he had rolled them all over into his stock unit KK. He had not stolen any money, however once in interview it had been explained to him that the act of hiding the losses amounted to a criminal offence; he accepted that he was guilty to that extent.
11. On the 2<sup>nd</sup> November 2012 Mr. Allen’s solicitors sought disclosure of “...the independent review of the Horizon system...”

#### **Prosecution response to defence**

12. Dr. 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. Dr. Jenkins provided an expert witness statement dealing with the non-Polling issues raised by Mr. Allen. His statement also 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.”* As for the non-Polling issue, Dr. Jenkins agreed that a non-Polling event had occurred at the branch over a 12-day period. He said that was unusual in itself but that such an event should have no impact on data recorded locally in the branch *“...provided all operational processes were followed correctly.”* He went on to say that, once communications had been restored all historical data stored within the branch would be sent back to the data centre as normal. Data, he said, was held locally at the counter for a total period of 35 days so that if operational processes were correctly followed, no data should be lost. Tellingly Dr Jenkins also said this: *“I have not had the opportunity to...see whether there were any issues [or] ...justification ...that this resulted in apparent system losses of £3,000 as claimed.”*

13. The lack of any calls to the Branch Conformation team or business support belies the suggestion that he believed the £3,000 loss was a genuine error resulting from lost data. The amount had also been outstanding for almost two years. In fact the level of his dishonesty is perhaps encapsulated by the reintroduction of already-counted cash during his migration to Horizon on Line.

## **Discussion**

14. 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 business support. I deal with each in turn:

- i. **Horizon**

I am as concerned by the defendant's assertion that the original £3,000 loss was the result of a non-Polling incident, particularly because Dr. Jenkins confirms that such an incident took place. More worrying is Dr. Jenkins' failure to properly respond to that assertion – he should have looked into the data to determine whether or not the non-Polling incident has been the cause of the otherwise unexplained loss. In this respect 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, touching as it does upon Horizon defects. Here we have an alleged defect, in-part confirmed but not fully investigated. The Helen Rose report adds to my discomfort in this case, on the basis that there Dr. Jennings also investigates a Horizon defect but seemingly fails to identify the real cause of the problem. Accordingly that too is disclosable to the defence. And in any event, in a case where we have relied upon evidence from Dr. Jenkins as to the efficacy of Horizon, we are bound to disclose material which undermines his status as an expert witness.

ii. **Customer support**

The defendant is vociferous in his assertions that he sought POL support and that it was not given. Accordingly the Second Sight Interim report is disclosable on this topic also, by reason of the criticisms directed towards POL on this subject.

**Safety of Conviction**

15. 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.
16. 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 report of the 6<sup>th</sup> June 2013.

17. 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.

18. 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:

- i. By his guilty plea he admits having committed the offence of theft. I have no doubt that he would have been advised that:
  - a. By pleading guilty he was admitting guilt;
  - b. he should only enter a guilty plea if he were truly guilty;
  - c. he should not plead guilty if he was in fact not guilty;
  - d. he should not plead guilty solely or mainly in order to achieve a lesser sentence in circumstances where he was not guilty.
- ii. His admission in interview that he re-introduced cash during the Horizon on Line migration process.
- iii. The absence of any evidence of calls to Branch Conformation team or business support, which if present would have support his account that he was “...*screaming at the Post Office*...” for help.

## **Conclusion**

19. 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 6<sup>th</sup> June report.
20. 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.
21. Should the defendant be granted leave to appeal against his conviction, we should oppose the appeal.
22. 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.

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**Simon Clarke**  
**Barrister**  
**Cartwright King Solicitors**

**16<sup>th</sup> July 2013**