

## **POST OFFICE LTD – CASE REVIEW**

### **R. v. ROBERT JOHN BOYLE**

**Nottingham/Derby Crown Court**

#### **Offence**

1. On the 6<sup>th</sup> January 2012 this defendant was sentenced to a term of 12-months imprisonment suspended for a period of 2-years for a single charge of Theft in which it was alleged that between 1<sup>st</sup> September 2010 and 16<sup>th</sup> April 2012 he had stolen £11,790.54 from the Alfreton Road Sub Post Office Branch.

#### **Case history**

2. The defendant appeared before the Nottingham Magistrates Court in early-August 2011. He gave no indication of his intended 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 20<sup>th</sup> October 2011.
3. An Indictment was settled, alleging Fraud by Misrepresentation and Theft, each charge being an alternative to the other. The Indictment was cast in this manner because, whilst the defendant had admitted in his interview that he had covered-up what he described as inexplicable losses by inflating cash on hand on an almost daily basis and at the end of each BTP, he had not taken any money.
4. The matter next came before the court for a Pleas and Case Management Hearing at Nottingham Crown Court on the 29<sup>th</sup> November 2012, whereupon the defendant was arraigned on both counts on the Indictment and pleaded guilty to the theft charge. The Fraud charge being an alternative to theft, it was not proceeded with

and the matter was adjourned to the 6<sup>th</sup> January 2012 for sentencing, with the outcome recorded at paragraph 1 above.

**Prosecution case**

5. The defendant Robert BOYLE had been sub-postmaster at the Alfreton Road, Selston, Sub-Post Office since 22<sup>nd</sup> January 2009. This was a fortress-type sub-post office located in a pet supplies and grooming business.
  
6. On the 15<sup>th</sup> April 2011 an audit was conducted which revealed a deficit in the accounts totalling £11,790.54. Almost immediately on the arrival of the auditors Robert BOYLE approached the auditor and informed him that the branch account would be approximately £11,750 short. When the auditor asked for an explanation the defendant told him that he had no explanation beyond then just appearing on the Horizon Office Snapshot. He went on to explain that he had been inflating his cash on hand figure to cover the consequent shortage.
  
7. The defendant was interviewed the same day. During his interviews, conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice, the defendant said that:
  - The business had been trading at break-even.
  - His office had been suffering unexplained losses since September 2010.
  - On the 15<sup>th</sup> September 2010 the Horizon Office Snapshot showed a surplus of £3,507.13 but then mysteriously showed a compensating shortage of the same amount in the final balance printed some 9 minutes later.
  - A similar incident had occurred on the 21<sup>st</sup> September with a figure of £6,474.47.
  - He was unable to offer any explanation for these incidents but was adamant the anomalies were being caused by the Horizon system. He did not know any other way they could be happening.
  - From that point on he thought that Horizon was “...kicking up figures...” that resulted in a loss at the office.

- He stated that he had “....*fabricated figures...*” so as to hide these losses over a 6-month period, by inflating his cash on hand figure on a daily basis and again at the end of each BTP. Accordingly each cash declaration and Branch Trading Statement since September 2010 had been false.
- He denied theft and said that he did not think anyone else had stolen the money.
- He believed that the losses were genuine queries which would “...*kick out of the system later.*”
- He employed one clerk whom would also undertake declarations. He had instructed her to inflate cash as being the only way to get a balance.
- He should have said something to POL about the Horizon activity but thought that he was doing nothing wrong. Possibly he had been very silly but that was about it.
- He agreed and accepted that he had admitted False Accounting.

#### **Defence case**

8. The defendant has unequivocally admitted False Accounting in both his comments to the auditor and later the same day in PACE interview; those admissions appear to be frank and comprehensive. He denies theft and, on his account would have a defence to that charge (but see discussion below) on the basis of his admissions to False Accounting, *i.e.* that he was hiding shortages on Horizon and so could not have taken any money.
9. In an unsigned and undated Defence Statement, but served by email on the 24<sup>th</sup> November 2012, the defendant set out the following matters:
  - He accepted making untrue representations but denied doing so to make a gain or cause a loss;
  - He denied taking any cash from the office;

- He disputed that “.....the Horizon system used by the Post Office is a foolproof system.”
- He maintained that the Horizon system was “...working incorrectly and that he only inflated the figures....to ensure that the accounts balanced [and to] counteract the errors shown by the Horizon system.”

### **Prosecution response to defence**

10. Given the terms of the Defence Statement, on the 6<sup>th</sup> November 2011 prosecuting counsel asked that an expert witness statement regarding the proper working of Horizon be obtained. In the event no statement was obtained as the defendant pleaded guilty to the theft offence at the Pleas and Case Management Hearing some 3-weeks later.

### **Discussion**

11. This is a most curious case and one which causes me a degree of concern, not by reason of disclosure issues, for those are relatively straightforward here, but because of the rather unsettling guilty plea to theft. I find this plea surprising in the circumstances and I shall seek to explain why in paragraphs 13 to 14 below.
12. Firstly however, in dealing with disclosure issues, given the defendant's stance throughout the proceedings, from first admission to the auditor through to Defence Statement, I have no doubt that both the Second Sight Interim report and the Helen Rose report are disclosable. Had we been possessed of that material during the currency of this prosecution our duty as prosecutor would have required disclosure.
13. The Plea of Guilty. The defendant's case was throughout that he did not take any monies from his post office; rather he had suffered inexplicable Horizon shortages and had inflated cash on hand figures so as to hide these shortages: he was guilty on his own account of False Accounting and in terms his Defence Statement said so. So why plead guilty to theft? To do so is to make an admission he need not have made: it was always open to him to advance his mitigation to the court on the

basis that Horizon had demonstrated inexplicable losses and that his culpability extended only to covering up those losses. Many defendants have taken this course. And a judge, faced by mitigation of the sort mentioned, would be prevented from sentencing the defendant on the basis that money had been taken. To go further, by admitting to having taken the money (as a plea to theft unambiguously proclaims), is to increase both culpability and sentence. Accordingly I do not understand why the defendant entered this plea.

14. On the basis of my experience in both prosecuting and defending criminal allegations at the highest (and lowest) level, I somewhat reluctantly come to the conclusion that the only rational explanation for this plea is that the defendant was badly advised by his lawyers. This is indicated by: the clear and unambiguous admissions to False Accounting in interview; the equally clear and unambiguous denials to having taken money; the very late nature of the plea after having served a Defence Statement to the contrary; the very obvious advantages in a case such as this to admitting False Accounting to cover shortages rather than to taking money; the admission to a more serious offence in circumstances where a lesser offence is both available (*i.e.* has been charged and is on the Indictment as an alternative count) and acceptable to the prosecution.

### **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. Having said that, I bring point to these concerns as to plea not because it either affects POL's position or because POL (or CK) is required to do anything about it:

it does not, and we are not, but only because should the defendant seek to appeal his conviction, that issue may be expected to figure in his argument. And should it figure in his argument it is possible that he would succeed. Having said all of that, there is nothing we should or can do on this point.

### **Conclusion**

17. This is a case in which, had we been possessed of the material at the relevant time, we would not 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.
18. Accordingly we are not required to disclose that material now.

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**Simon Clarke  
Barrister  
Cartwright King Solicitors**

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