

POST OFFICE LTD – CASE REVIEW

R. v. THOMAS GEORGE BROWN

Newcastle Crown Court

Offence

1. Thomas George BROWN faces two charges of False Accounting, alleging that between the 29th February 2008 and the 25th November 2008 (charge 1) and between the 20th November 2008 and the 25th November 2008 (charge 2) he made false entries into Horizon so as to conceal a shortage of £85,426.80.

Case history

2. The defendant appeared before the Newcastle Magistrates Court on 2nd October 2012. He indicated a Not Guilty 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 the 11th December 2012. The committal was unopposed and the case was committed to Newcastle Crown Court for a Pleas and Case Management hearing on the 10th January 2013 at Newcastle Crown Court. Counsel who attended at the first Magistrates' Court hearing was on that date informed that the case would be contested, on the basis that there must have been an error in the Horizon accounting system.
3. The matter next came before the Newcastle Crown Court Pleas and Case Management on the 10th January 2013, when the defendant entered not guilty pleas. The matter was listed for trial to commence on the 17th June 2013.
4. Following adjournment the trial is now listed to commence on the 18th November 2013.

Prosecution case

5. The defendant Thomas George BROWN was the Sub-Postmaster at the North Kenton Post Office Branch, Newcastle-upon-Tyne. He also owned the associated shop and employed a Post Office Manager and three other staff. Mr. Brown's User ID was TBR004.
6. Prior to purchasing the business in February 2008, BROWN was employed by Finlays at the Benton Estate Post Office, from the 15th July 2003 to the 25th September 2006 and at the Kenton Post Office from the 25th September 2006 to the 29th February 2008.
7. On the 25th November 2008 at approximately 8.30am an audit was conducted at the North Kenton Post Office; this revealed a total shortage of £85,426.80. A large part of that shortage seemed to derive from a transaction completed on the 20th November 2008: at 8.01am that day a single transfer of £82,614.24 out of Lottery funds and into Main stock had been actioned on the 'Horizon' system under the User ID TBR004. That transfer had not been accepted on Horizon when a snapshot check was conducted at 8.41am on the 25th November, some 5-days after the transfer had been actioned. Accordingly the £82,614.24 was 'lost' in the system.
8. At 2.59pm on the 25th November the audit team noted that the transfer had been accepted; this, according to 'Horizon', had occurred at 10.21am on the 25th November and again under the User ID TBR004 – Thomas BROWN had been present and in the secure area throughout the proceedings. It is to be noted that this transfer occurred about one hour and forty minutes *after* the audit had commenced.
9. The effect of these two transfers was a deficit at the Post Office of £82,614.24. The audit further small shortages resulting in the final figure of £85,426.80.
10. When asked during the audit, Thomas BROWN said he had no knowledge of the transfer.
11. In addition to Thomas BROWN, four others were employed at North Kenton: Helen ALLEN; Kayleigh ALLEN; Victoria OLIVER; and Deborah MEIN: each has

provided a statement in the following terms:

Helen ALLEN

Post Office Manager since December 2006 and prior to BROWN taking the business over. Before he came she attended to all of the cash ordering, daily reports and lottery returns. When BROWN took over he relieved her of these duties and invariably conducted them himself. Always counted the cash himself at close of business. BROWN then began to alter a number of accounting and security procedures; this made Ms. ALLEN unhappy. She complained to him but he dismissed her complaints with varying but irregular explanations. Conducted cash checks herself because of her concerns and found substantial shortages. The Post Office was "...*always short of cash.*". On occasions BROWN would make up shortages in the Post Office with shop takings and repay the shop when the next cash remittance. At one point on the 25th November BROWN asked Ms. ALLEN to stand with the audit team as he wanted to leave the office.

Kayleigh ALLEN

Clerk since February 2008 (and daughter of Helen ALLEN). Not involved in cash balancing or accounts. Overheard a conversation between BROWN and Victoria OLIVER: Ms. OLIVER told BROWN that "...*she did not want to be entering cash into the computer that wasn't there. Tom said it was fine as the Post Office knew about it and not to worry....*" Cash remittances arrive twice-weekly, on Tuesdays and Thursdays but often the Post Office would run out of cash. When this happened BROWN would send staff out to clients to see if they were due to deposit large sums; if so they were asked to lodge the deposit early. Confirms her mother found a cash shortage of £20,000 on one occasion.

Victoria OLIVER

Clerk. Confirms BROWN's alteration of procedures. Confirms BROWN using shop money to supplement Post Office shortages. He would also ask them to reissue torn and Scottish notes when short. Refers to an occasion when short £18,000 and was unhappy about how it was dealt with.

Deborah MEIN

Clerk. Confirms two occasions when, due to staff concerns about running out of cash, the staff counted and found shortages of £22,000 and £37,000.

Searches

12. The usual searches were conducted. That of Thomas BROWN's home revealed bank and financial documents suggesting that he was in considerable debt. Also found were two Alliance & Leicester paying-in slips made out to 'Finlays (North East) Ltd' in the sum of £1747.40 dated 7/10/2005 and £2642.50 dated 1/6/2006.

13. Subsequent enquiries with Alliance & Leicester suggest that these sums were not credited to Finlays account. It also appears that between 2005 and 2007 a number of deposits lodged by Finlays at the Benton Estate Post Office had not been credited to their account; these discrepancies amount to some £48,000.00.

Interviews

14. Two interviews conducted: firstly on the 15th December 2008 and later on the 2nd August 2011.

15. 15th December 2008:

- He had borrowed £150,000 to purchase the business, it had cost £140,000. It had belonged to the Finlays.
- Confirmed his password was confidential;
- The money had been in the Lottery for months and he didn't know where it was;
- He had never taken any money from the Post Office;
- He had made the transfer on the 20th November but that it had not been accepted into stock unit AA. He had left the cash in the lottery and so that should have been over by the £82,000. He was dumbfounded as to where the money had gone. There must be something wrong with the lottery.
- On the day of the audit the auditor had asked him (Brown) to log-in and the auditor had then worked two computers: one under BROWN's log-in and the other under his own. BROWN had not worked on any computer himself

on the day of the audit and so could not have executed the 10.21am transfer.

- Often the girls would count the cash at the close of business; Helen (ALLEN) helps him with the branch trading statement.

2nd August 2011:

- Mr. BROWN denied taking any money from any of the Post Offices he had worked at;
- The Alliance & Leicester paying-in slips were at his home because he used to accept them at the Benton Estate Post Office and he always had “loads of stuff” in his pockets;
- He did not know why the sums indicated on the slips had not been paid into Finlays’ account;
- Since he had been suspended Zubair PATEL (‘ZUBES’) had taken over as sub-Post Master; ZUBES had also suffered losses of £12,000 during his first 2 months of tenure but these losses had stopped when Deborah MEIN had left;
- Accordingly he believed that Deborah MEIN was responsible for all of the losses;
- He could not remember the losses referred to by his other staff;
- He agreed that he had instructed the staff not to physically count the cash – in 30 years he had never counted cash;
- He had not reported the losses because he believed the money would be ‘found’ and he feared for his position;
- Where the accounts had not balanced he had inflated the cash figures to show a balance;
- It was always he who inflated the cash figures, none of the other staff did so;
- He had falsified the accounts – “*Yes yes guilty*”
- It was dishonest and misleading to have altered the cash figures to disguise losses.

Defence case

16. In interview the defendant indicated that he did not know how the losses arose and offered a number of speculative explanations. He admitted false accounting to hide the losses.
17. This defendant has yet to serve a Defence Statement. I have however discussed this case with outside prosecuting counsel Chris Rose of New Park Court Chambers, Newcastle. The defence case appears to be that, whilst Mr. Brown admits covering his unexplained losses by altering cash figures and moving cash into and out of the Lottery Unit, he did so without any dishonest intent.

Prosecution response to defence

18. Gareth Jennings has provided a statement in this case.

Other relevant factors.

19. Mr. Brown is now 67 years old and has been declared bankrupt; both of these factors militate against any effective recovery.

Discussion

20. Throughout this case the defendant sought, at least implicitly, to rely for his defence on what he asserted to be failings on the part of Horizon. Further, this is a case in which Gareth Jennings has provided one of his (pro forma) expert witness statements.
21. Because this matter has not yet reached the trial stage, it is not, and cannot be, the purpose of this review to determine the merits or otherwise of the defence case, not least because we have yet to receive a Defence Statement. Our only task at this stage is to determine whether or not we are required by our disclosure duty to serve the Second Sight Interim report and the Helen ROSE report. The answer to that question is simply put: s.3 of the Criminal Procedure and Investigations Act requires us to disclose material in our hands which meets the test for disclosure and this material does meet the test, based upon what the defendant said in his interview.

22. Accordingly our duty is now to serve on the defence those documents. I advise that we comply with that duty in this case. Chris Rose agrees with this advice.

23. Subject to the receipt of instructions as to the continuance of this prosecution (for which see paragraphs 24-26 below, and 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.

Other considerations.

24. What remains is the decision as to whether the continued prosecution of Mr. Brown remains in the Public Interest (and that of POL). In addressing this issue I take into account the following matters, which operate in favour of continuing the prosecution:

- i. The loss, some £85,000;
- ii. The apparent extent of the defendant's dishonest conduct;
- iii. Prolonged course of conduct, committed over 9-months and encompassing many false entries;
- iv. The fact that the defendant deliberately cast suspicion on Deborah MEIN (see para.15 above).

25. Conversely, factors which operate in favour of terminating the proceedings include:

- i. His age, now 67;
- ii. The fact of his bankruptcy;
- iii. Any Confiscation Order would be nominal, he having no assets;
- iv. The passage of time since the original shortfall was identified – 25th November 2008. The 5th anniversary of the audit will fall within the trial listing of the 18th November 2013;

v. No members of the public suffered loss;

vi. The cost of continuing the prosecution.

26. The decision to continue or terminate this prosecution lies with POL: the considered opinion of prosecuting solicitors lies with terminating the prosecution. We arrive at this view primarily because of the almost impossible recovery scenario coupled with the ongoing cost of continuing. Lesser factors include the defendant's age.

Simon Clarke
Barrister
Cartwright King Solicitors

15th July 2013