

## **POST OFFICE LTD – CASE REVIEW**

**R. v. JERRY KWAME HOSI**

**Snaresbrook Crown Court**

**Trial – 11<sup>th</sup> October 2010 to 21<sup>st</sup> October 2010**

**Sentence 11<sup>th</sup> November 2010**

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### **Preamble**

This case was prosecuted by the Royal Mail Group and outside counsel instructed directly by RMG Legal Department. Accordingly Cartwright King played no part in this prosecution.

I have been provided with the prosecution file but have not seen any transcripts covering the trial itself; accordingly my advice is based upon the trial papers (Witness statements, Exhibits, Unused Material *etc.*) and not the evidence given in court. Necessarily therefore, this Full Review takes a different form from the general.

### **Offences**

1. During the period 8<sup>th</sup> – 12<sup>th</sup> November 2010 this defendant was tried at Snaresbrook Crown Court and convicted of one offence of theft and three of False Accounting: he was sentenced to a term of 21 months immediate imprisonment on each count, to run concurrently. The charges alleged that between 1<sup>st</sup> September 2005 and 30<sup>th</sup> November 2006 Mr. Hosi stole £72,107.78 from Post Office Ltd. The remaining three counts alleged that Mr Hosi had made false entries in the Horizon accounts, on the 5<sup>th</sup> July 2006, 10<sup>th</sup> August 2006 and the 8<sup>th</sup> November 2006.
2. The defendant was also made the subject of Confiscation proceedings under the Proceeds of Crime Act 2002 – I am unable to comment on this aspect of the case as I have not seen any papers relating to that application.

### Case history

3. Jerry Kwame HOSI faced an Indictment containing 4 counts. Count 1 alleged the theft, over time, of a total of £72,107.78. Counts 2 to 4 on the indictment alleged False Accounting, in that on specified dates within the time-span contained in the first count, Mr Hosi made false entries in the Horizon accounts to cover the theft alleged in Count 1. I proceed on the basis that Mr Hosi pleaded Not Guilty to all four counts on the indictment.
4. I list below my understanding of the chronology of this case – there are gaps, for the reasons set out in the preamble.

9 <sup>th</sup> May 2008	-	<u>First appearance</u> : Barking Magistrates Court. No indication of plea; Jurisdiction declined; for committal 4 <sup>th</sup> July.
4 <sup>th</sup> July 2008	-	<u>Committal Proceedings</u> : Barking Magistrates Court Case committed to Snarebrook Crown Court for trial: PCMH listed for 28 <sup>th</sup> August 2010.
27 <sup>th</sup> August 2008	-	<u>Defence Statement served</u> . Inadequate.
28 <sup>th</sup> August 2008	-	<u>PCMH</u> . Snarebrook Crown Court. No pleas taken. Adjourned to the 11 <sup>th</sup> September 2010.
11 <sup>th</sup> September 2008	-	<u>Adjourned PCMH</u> . Snarebrook Crown Court. Not Guilty pleas entered. Trial fixed to commence 3 <sup>rd</sup> August 2009.
26 <sup>th</sup> February 2009	-	<u>Schedule of Non-sensitive Unused Material served</u> .
4 <sup>th</sup> March 2009	-	Counsel advises nothing to disclose. (but says not yet seen Defence Statement)
24 <sup>th</sup> April 2009	-	<u>Pre-trial Review</u> . Snarebrook Crown Court..
10 <sup>th</sup> July 2009	-	<u>Defence Statement served</u> . (see below)
23 <sup>rd</sup> July 2009	-	Trial date moved – defence wish to instruct an expert.
24 <sup>th</sup> August 2009	-	<u>Additional Schedule of Non-sensitive Unused Material served</u> .
27 <sup>th</sup> November 2009	-	Defence serve preliminary Expert Report. Defence expert wishes to "...conduct a review of the Horizon System..."
1 <sup>st</sup> December 2009	-	Defence solicitors seek disclosure of other POL cases under prosecution, so as to arrange for joint-expert in those cases.

7 <sup>th</sup> December 2009	-	<u>Snaresbrook Crown Court</u> . Trial moved to enable defence to make disclosure requests.
8 <sup>th</sup> January 2010	-	Charles McLachlan is defence expert (as in R. v. Misra). He seeks access to Fujitsu.
19 <sup>th</sup> January 2010	-	Defence experts seek disclosure of numerous items.
		There then follows a period of 'sparring' between Post Office Legal and the experts on the issue of access to Horizon.
2 –12 February 2010	-	Email chain re: DISCLOSURE – see below
26 <sup>th</sup> March 2010	-	<u>Mention</u> – Judge directs defence to make more focussed disclosure requests.
17 <sup>th</sup> May 2010	-	<u>Disclosure Orders</u> – Snaresbrook Crown Court. DISCLOSURE ISSUES RESOLVED.
8–12 November 2010	-	TRIAL
13 <sup>th</sup> December 2010	-	SENTENCED

### Prosecution case

5. Jerry Kwame HOSI was the SPMR at the Porters Avenue SPO in Dagenham, London, for a 20-month period commencing on the 31<sup>st</sup> March 2005. On the 29<sup>th</sup> November 2006 an audit was conducted; this revealed a shortage of some £74,000 in cash, with minor surpluses. The overall loss was £72,107.78. On the day of the audit Mr Hosi told investigators that he had been experiencing problems with balancing since the introduction of Balanced Trading; he also said that Horizon had been "...malfunctioning."
  
6. Mr Hosi was interviewed on the day of the audit and again on the 17<sup>th</sup> April 2007. At the first interview Mr Hosi did not require the assistance of a solicitor or other representative; at the second he had the attendance of a Post Office Friend. Both interviews were conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice.

**Interview 1 - 29<sup>th</sup> November 2006**

- Upon appointment Mr Hosi had one week at a counter training school and a further week in his Post Office.
- He produces a daily cash declaration by entering cash-on-hand. Initially said that he did this by obtaining a snapshot and entering the matching cash-on-hand; later he said that he would accurately enter the physical amount on-hand. He reported any discrepancy to the Helpline.
- Since the start he had experienced “...incredible discrepancies...” at the office. He had received error notices for losses and gains and could not understand why.
- At the end of the Trading Period he would produce a trial balance. From this he would ascertain the amount of cash-on-hand he should have to balance and then enter this figure into Horizon; thus he would balance. Once he had rolled over into the next TP, he would enter physical cash-on-hand, thus showing the discrepancy. He would then report this loss to the Helpline but said that “...sometimes they are no help...”
- He last contacted the Helpline two months ago (*i.e.* late-September 2006). He operated this system of balancing because the system did not permit the transfer of shortages to a suspense account and he had insufficient funds to make good. He had followed this practice since taking the office on in September 2005.
- He admitted inflating cash to cover losses, since about February 2006. Later he said he had been doing so since September 2005.
- A consistent theme of this interview was Mr Hosi’s insistence that Horizon was somehow responsible for the losses.

7. Between the two interview dates (November 2006 and April 2007) the two Horizon counter processing units were removed and returned to Fujitsu for examination – see paragraph 12 below.
8. Call logs were obtained from both the Helpline and Horizon Support Desk (HSD); neither revealed any calls related directly to Horizon losses declared following the TP. Fujitsu produced a statement dealing with the processing units, for which see paragraph 10 below.
9. Mr Hosi was again interviewed, in April of 2007.

**Interview 2 - 17<sup>th</sup> April 2007**

- Mr Hosi said that he had contacted the Helpline “sometimes” rather than upon the occasion of every shortage as stated in the first interview. Later he said that he did not contact the Helpline.
- He was taken through the accounts and shortages and again insisted that Horizon was at fault.

**RELEVANT WITNESSES**

**Andrew Paul DUNKS**

10. Employed by Fujitsu Services Ltd. as an I.T. Security Analyst on the Post Office account. Reviews and produces Horizon Help Desk (aka Horizon Support Desk (HSD)) call logs relating to Porter's Avenue Post Office. Thirty-three calls reviewed – “.....all are of a routine nature and do not fall outside the normal working parameters of the system.....and would have had no effect on any counter discrepancies.” I have reviewed the logs and note the following call statistics and content:

<u>Call topic</u>	<u>Number</u>
Power cut	1
System freeze	3
Loss of network	5
Connectivity	

**HSD Call Log Review**

<u>No.</u>	<u>Date</u>	<u>Narrative</u>	<u>Outcome</u>
1	10/11/2005	Failed to Roll over	Passed on to NBSC for resolution
11	18/1/2006	Screen freeze mid-transaction.	Reboot advised. Thereafter normal operation.
19	9/5/2006	On-line services not available.	PO may have briefly lost connectivity – no fault located.
20	12/5/2006	Critical error – Remote Procedure call failed.	Counter rebooted.
22	20/5/2006	Communication failure.	Reset.
25	4/9/2006	On-line services not available.	Connection successfully pinged and ok.
26	4/9/2006	Error Code 00000111 showing with message to contact Horizon. Code indicates loss of communication.	Not stated.
27	5/9/2006	On-line services not available.	Connection successfully pinged and ok.
28	5/9/2006	On-line services not available. Online services intermittent since previous morning (4/9).	Counter reboot. BT lines checked (no fault). Base Unit replaced.
29	13/9/2006	Frozen screen	Rebooted.
30	21/9/2006	Frozen screen	Rebooted.

**Phil BUDD**

11. Employed by Fujitsu Services Ltd. as a Counter Development System Engineer. Examines two Horizon counter processing units removed from Porter's Avenue. Does not interrogate the encrypted message-store for transactional data. Copies the hard disks and examines for additional files which should not be present. Satisfied that "...there was nothing unusual on the [counter processing unit] hard disks. The software was complete and should be expected to operate as required."

**Stephen TANKARD**

12. Employed by RMG/POL; engaged in the reporting and analysis of data captured at NBSC. Produces NBSC Call Logs for Porter's Avenue. Whilst I do not propose to record all of the many calls appearing in the logs, the following points emerge:

- i. It is plain from the number and type of calls that this SPMR has a significant training and skills deficit. Many of the calls relate to the seeking of advice on the correction of errors, or on the correct procedure for executing a transaction.
- ii. On 16/6/2006 the SPMR asked if POL provided a loan facility to SPMR's.
- iii. The only calls relating to Horizon system error appear on and after the 3<sup>rd</sup> August 2006 and then there were only 4 such incidents (1/9; 4/9 (4 calls); and 5/9 – all 2006).

**Louise SHERIDAN**

13. Also employed by RMG/POL; an Advanced Customer Advisor. Deals with SPMR calls into the helpline. Looks at NBSC call logs for Porter's Avenue office produced by Stephen Tankard:

- i. No record of calls relating to losses or gains at the office.
- ii. Six calls between 12/10/2005 and 7/12/2005 and relating to 'Branch Trading' and 'Balancing', none of which would affect the office balance. Thereafter no further calls on these topics until 13/9/2006, again with no effect on balancing the office.

**Mandy LAWLESS**

14. Area Intervention Manager for RMG/POL. Duties included visiting SPO's and dealing with issues such as balancing, errors and PR. Speaks of several visits to Porter's Avenue: Mr Hosi never approached her to assist with balancing and she was never made aware of any large losses. Additional training was provided to Mr. Hosi on the 4<sup>th</sup> and 5<sup>th</sup> May 2005: topics covered included 'Weekly Balancing' and 'Cash Account'

with an outcome described as “To understand the importance of weekly balancing and cash account procedures”

### **Defence Statement**

15. Two Defence Statements were served in this case: the first on the 10<sup>th</sup> July 2009 and the second in 2010. I have seen the first Defence Statement, however the second does not appear in the papers. The following points are to be noted:

- i. The July 2009 Defence Statement is plainly inadequate as a matter of law. It discloses no defence other than a bare denial, together with a sentence to the effect that the defendant will rely on the account advanced in interview as being his substantive defence.
- ii. The July 2009 Statement contains a long list of disclosure requests, most of which appear to have been met, albeit only after much correspondence and a nudging by the court.
- iii. From such references as I have seen, the second Defence Statement appears to have been more detailed and again contained the same long list of disclosure requests as the first Statement. The defence advanced in the second Statement appears to have remained as set out in the interviews.

16. For these sources I can infer that the defence appears to have been thus:

- i. The defendant did not steal POL monies;
- ii. The defendant was inadequately trained to perform his tasks as SPMR;
- iii. POL backup was inadequate or insufficient;
- iv. Whilst he admitted to having made false entries into Horizon, he did not do so with any dishonest intent;

v. Such false entries as he did make were made because:

- a) he was unable to explain the losses accruing to the office;
- b) he had insufficient funds to make good the losses; and
- c) by reason of his inadequate training and POL's inadequate or insufficient backup, so that he fell into repeated (but unidentified) error;

vi. Those losses accrued as the direct result of some undefined Horizon failing or error which he was unaware of and unable to explain.

17. Included in what was essentially a 'cut-and-paste' list of disclosure requests was a request for:

- i. All Horizon accounting records, for the period 1/9/2005 to 30/11/2006;
- ii. Full itemised stock list covering stock and cash;
- iii. An itemised list of all transactions executed at the office.

### **Disclosure**

18. I have considered the extensive correspondence on matters of disclosure and passing between the defence solicitors and the RMG/POL Legal Department. I do not propose to recite that material here: my conclusions, derived from a detailed consideration of that correspondence, may be readily summarised. It is clear to me that the following may be said:

- i. The approach to disclosure taken by solicitors for both the defence and the prosecution in this case was unrealistic, ill-informed as to the law and, from the prosecution side, unnecessarily obstructive. In terms, the defence asked for too much and the prosecution sought to provide too little.
- ii. Such disclosure as was ultimately made was properly made, in accordance with the relevant legislation;

- iii. The defence in fact received that which the court and parties agreed they should have received, albeit after some considerable and unnecessary delay;
- iv. Material relating to the so-called ‘Callender Square’ or ‘Falkirk’ bug was not disclosed but should have been (see paragraphs 36, 40, 48 & 51 below).

### **DEFENCE CASE**

19. The defendant gave evidence at trial. I have not seen any note of what he said and so for the purposes of this Review I have assumed that he reiterated those matters advanced in his two Defence Statements. Some support for this approach may be found in those papers I have seen.

20. The defence lawyers also agreed Formal Admissions, read to the jury and as follows:

- “3. The defence have (*sic*) been provided with access to all material that was seized from the Porters Avenue Sub Post Office on 29<sup>th</sup> November 2006.
- 4. The defence have (*sic*) been provided with the discs containing the three months of transactional data that was extracted from the Porters Avenue Horizon system .....” [NB: In fact they received 3x Monthly TP’s, amounting to just under 4-months of data (see Davidson, DRAFT Expert Report, para. 4.4)]

### **Expert witnesses**

21. I have seen material which suggests that the defence had proposed to call two Expert Witnesses to trial to support the defendant’s contention that something was ‘wrong’ with Horizon. Jeffrey Davidson, a Forensic Accountant (of Crowe Clark Whitehill LLP, Chartered Accountants) and Professor Charles McLachlan, Computer expert, were instructed by the defence to prepare reports dealing with Horizon issues. In the end, neither witness was called by the defence nor was any report presented to the jury. I have not seen a report (or draft) from Professor McLachlan, however I have seen a both a “Preliminary report” dated 19<sup>th</sup> October 2009 and a “DRAFT Expert Report” dated October 2010, each compiled by Mr Davidson.

**“Preliminary report” complied by Jeffrey Davidson – 19<sup>th</sup> October 2009**

22. In his Summary and Conclusions Mr Davidson makes the following points:

- RMG/POL appear to have proceeded on the basis that Mr Hosi is guilty of the offences charged;
- Insufficient data has been disclosed, so that he is unable to perform a full audit;
- He does not understand some of the data;
- There had been no exploration by RMG/POL into whether the ‘missing’ money was in fact missing, rather than the imbalance was due to a Horizon error;
- RMG/POL had provided no evidence as to the integrity or reliability of Horizon;
- No check had been made to see whether individual transactions had been correctly made, nor had there been any analysis of the discrepancies;
- No evidence of Mr Hosi’s competence on Horizon had been provided by RMG/POL.

23. Mr Davidson did not identify any Horizon failing. He noted however that a number of other SPMR’s had complained that Horizon may be unreliable, and suggested that by reason of these additional complaints there must be some question over Horizon.

**“DRAFT Expert report” complied by Jeffrey Davidson – October 2010**

24. Here Mr Davidson repeats and expands upon the comments made in his “Preliminary report”. Whilst he concedes that he has been provided with further material to assist him, he laments that he still has not had sufficient material dealing with transactional data, Horizon systems data, or a sufficient depth (in terms of timescale) of such material. Mr Davidson also expresses his concern at not having been provided with the opportunity to audit Horizon.

25. Under the heading “DEFENDANT’S KNOWLEDGE OF HORIZON” (DRAFT Expert Report, para.3) Mr Davidson speculates that Mr Hosi “...may not have been adequately trained on the system.” Mr Davidson founds this proposition on the basis of what he believed to be a lack of understanding on the part of Mr Hosi of the questions asked of him; his “...very confused demeanour” as revealed by the various call logs; and what he asserts to be a failure by RMG/POL to investigate Mr Hosi’s level of competence. Mr Davidson goes on to conclude that:

“...It may be possible that the discrepancies have arisen due to errors being made by the defendant....in processing transactions.”

**Gareth Jenkins – Fujitsu Services Ltd.**

26. I have seen in the correspondence file a document prepared by Gareth Jenkins of Fujitsu, which Mr Jenkins describes as being “...intended to indicate [his] thoughts on [Mr Davidson’s draft report]”. In his document Mr Jenkins: notes that Mr Davidson received all of the data agreed as being that to be disclosed; explains matters not understood by Mr Davidson; and agrees that, having looked at the NBSC call logs, Mr Hosi sounds like someone who is confused and notes that POL need to address the issue of lack of help/training.

27. Mr Jenkins does not comment on Mr Davidson’s suggestions (see para.23 above) that RMG/POL has proceeded on the basis of guilt; whether the ‘missing’ money was in fact missing; the alleged absence of any evidence relating to the integrity or reliability of Horizon; or whether any checks had been made to see whether individual transactions were correctly made. In the context of this Full Review, the absence of any comment by Gareth Jenkins on matters of Horizon integrity and reliability is important, for it goes directly to the issue for this Review, *i.e.* whether or not the Second Sight and Helen Rose Reports ought now to be disclosed. It is to be noted that this Gareth Jenkins document was disclosed to the defence expert.

28. In an email dated 1<sup>st</sup> November 2010 Mr Jenkins notes that the import of the defence report “...seems to be that the defence are saying that there is a system problem but with nothing to indicate where or when there was such a problem...there is very little substance to the report other than details of what further info he would like!!”

### **Professor Charles McLachlan**

29. Whilst the correspondence seems to suggest that Professor McLachlan was instructed by the defence in this case, no report was served under his name and he did not appear at trial. It is useful to note however that Professor McLachlan has been instructed by defendants in several RMG/POL cases, most notoriously the *Misra* case, and accordingly he has knowledge of Horizon and those issues then arising, *e.g.* the so-called “Falkirk” bug. It is to be noted that in Mrs. Misra’s trial, conducted between the 11<sup>th</sup> October 2010 to 21<sup>st</sup> October 2010, Professor McLachlan both provided a report and gave evidence, as indeed did Mr Jenkins.

### **Expert witnesses at Trial**

30. Correspondence dated the 4<sup>th</sup> and 5<sup>th</sup> November indicates that neither party called any expert witness at trial. On this topic it is important to understand the role and duties of expert witnesses and the tactical decision-making processes involved in decisions to call or abandon expert witnesses. Any expert witness must be independent of the party calling him: he is a witness to the court and must assist the court on his area of expertise. Thus where an expert witness provides a report adverse to the party hoping to call him, they need not, and usually will not, call him, for to do so would be to call a witness adverse to their case. It is within this framework that the defence in Mr Hosi’s case decided not to call their expert witnesses.

### **Other matters**

31. **GRO**

**GRO** He also carries considerable debt.

32. The trial commenced on the 8<sup>th</sup> November 2010 and ran for five days. On the 12<sup>th</sup> November Mr Hosi was convicted by unanimous verdict on all four counts on the Indictment.

### **Discussion**

33. The sole purpose of this Review is to determine whether or not the Helen Rose report or the Second Sight Interim Report ought to be served on Mr Hosi’s lawyers so as to

correct what would have been a failing had RMG/POL been possessed of those documents in 2010. It is certainly not the purpose of this review to determine whether or not Mr. Hosi's convictions are unsafe: that decision is reserved to the Court of Appeal only. Issues of whether or not that material might cast doubt on the safety of the convictions do however fall to be considered.

34. In determining the issue reserved to this Review I have identified two separate strands of the disclosure process: firstly, those matters of disclosure repeatedly raised, and litigated, by Mr. Hosi's lawyers; and secondly, those matters considered in the Helen Rose and Second Sight Reports of 2013. Whilst the first of those topics is, strictly speaking, not in consideration for the purposes of this Review, I will nevertheless briefly comment on the topic. Thereafter I will consider the central part of this Review, that of the two reports.

### **1. Pre-trial and on-going Disclosure**

35. From audit to the day of his trial Mr Hosi's defence relied upon alleged but unspecified Horizon-related failings. A further line of defence suggested that Mr Hosi was not competent to operate the system and accordingly the losses could be attributed to errors made by him in operating the system.

36. A considerable amount of disclosure was sought by Mr Hosi's appointed expert witness and a substantial quantity was provided, although I have seen no reference to the disclosure of material relating to the so-called 'Callendar Square' or 'Falkirk' bug. This omission is worrying, although militating against such concerns is the fact that Professor McLachlan had litigated that issue only a few weeks prior to Mr Hosi's trial, when appearing as a defence expert witness in the *Misra* trial. Nevertheless I take the view that material relating to the 'Callendar Square' or 'Falkirk' bug should have been disclosed to the defence in this case.

37. It is also correct to note that not all that was sought was provided, and this "failure" gave rise to a sustained correspondence trail and intervention by the court, the outcome of which was limited disclosure relevant to the issues to be tried, save as is mentioned in the preceding paragraph.

38. It is equally important to note that, in the end, no expert witnesses were called to give evidence at trial and no expert evidence was presented. Whilst I am unable to say why this was the case, I assume that Mr Hosi was competently represented and properly advised.

39. In coming to my conclusion on this aspect of the disclosure process, I have considered Mr Hosi's patent lies in interview, to the effect that he had reported discrepancies to the NBSC and HSD lines when he had not; the decision by the defence not to call previously instructed expert witnesses (for which see para.31 above); and the duties relating to disclosure placed upon the shoulders of any prosecutor. I am reminded of the opinion of the House of Lords in *R. v. H; R. v. C*, [2004] 2 AC 134] where the Committee expressed the view that:

“The trial process is not well served if the defence are permitted to make general and unspecified allegations and then seek far-reaching disclosure in the hope that material may turn up to make them good.”

40. This view neatly encapsulates the approach taken to Horizon by those acting for Mr Hosi. I have however concluded the following:

- a) The obstructive approach taken by RMG/POL to disclosure in this case was both unnecessary and regrettable;
- b) Material relating to the ‘Callendar Square’ or ‘Falkirk’ bug should have been disclosed to the defence: it was incorrect to merely rely upon Professor McLachlan’s pre-existing knowledge (if that be the case) of the topic;
- c) In all other respects, no meaningful criticism can be made of the disclosure process itself.

## **2. The Helen Rose and Second Sight Reports of 2013**

41. At one point or another during the investigation, prosecution and trial process Mr Hosi raised issues of training, support and Horizon fallibility, all matters considered in the Second Sight Interim report.

### **Training**

42. Whilst it is correct to note that no disclosure was sought on the subject and none was provided, prosecution duties of disclosure on this topic do not end there. Where the topic is raised as a meaningful and tenable defence, then disclosure of material which may support the contention that RMG/POL's training was inadequate would meet the test for disclosure. It is plain too that there was a deficit in Mr Hosi's skills relating to Horizon usage. Whilst it was clear from the interviews that this was the case, this issue seems to have been abandoned by the defence when they discarded their expert witnesses, one of whom, Mr Davidson, made specific reference to the matter. It is also interesting to note that in his informal document, disclosed to the defence, Gareth Jenkins noted that "...Mr Hosi sounds like someone who is confused" and noted that POL needed to address the issue of lack of help/training. To that extent therefore, there was *some* disclosure on this topic.

43. Although I have been unable to consider any transcripts of this trial, given the way in which this issue was raised and litigated, I have come to the conclusion that the proposition that other SPMR's had complained about the quality and adequacy of their training in the period 2007 – 2013 may have met the test for disclosure in this case. Matters do not end there however, for the test to be applied in determining whether or not the Second Sight Interim report now falls to be disclosed is as was described by Brian Altman QC in his General Review document of the 15<sup>th</sup> October 2013:

"Although the test for disclosure in past conviction cases is not that under the CPIA, at common law the issue is one of "materiality", which is not a very different thing, .....outside any post-trial period criminal proceedings, .....there remains a common law duty to disclose material that might cast doubt on the safety of the conviction" (para.127)

44. In my view the Second Sight Interim report material, as it relates to training issues, does not meet that test: even on a generous interpretation I am of the firm view that the Court of Appeal would have no hesitation in dismissing any suggestion that the Second Sight Interim report *might* cast doubt on Mr Hosi's convictions for false accounting, particularly given his admissions in interview to having done just that. As for the theft

conviction, whilst the issue of training remained a 'live' issue throughout the process, again I cannot see the Court of Appeal entertaining any argument that a failure to disclose the fact that other SPMR's had complained about training quality could undermine this conviction. Accordingly I am of the view that the Second Sight Interim report material, as it relates to training issues, cannot find any sensible appeal against the sentence imposed in this case and thus does not fall to be disclosed.

45. The Helen Rose report does not bear on this issue.

### **Support**

46. In his second interview, in April 2007, Mr Hosi said that, contrary to his earlier assertions that he had contacted the various helplines for support whilst enduring his ever-repeating but unexplained losses, he had not in fact done so. Call Logs corroborate this assertion. Thus whilst the Second Sight Interim report goes to this issue, it is clear that Mr. Hosi lied to investigators on this topic and did not seek any support from RMG/POL on the issue of false balances, losses or an inability to balance. In those circumstances it cannot reasonably be said that there was a failing in support, because in fact, none had been sought. For all of these reasons and applying the test identified by Brian Altman QC as the appropriate approach, I conclude that, on this aspect of the case, the Second Sight Interim report does not fall to be disclosed now.

47. Again the Helen Rose report does not bear on this issue.

### **Horizon**

48. Whilst the suggestion that Horizon was in some way at fault in producing the losses complained of was the central plank of Mr Hosi's case, it is not and cannot be the function of the prosecution to respond to general and unspecified allegations and requests for disclosure in the hope that material may turn up to make them good. The fact that (for whatever reason) the defence abandoned their experts in this case is telling. One would have assumed that, had they had anything meaningful to say, they would have been called by the defence to give their evidence and opinions – this course was open to the defence and they did not avail themselves of it and their decision not to do so was made by no doubt experienced lawyers in knowledge. The one concern I do

have however is that of the failure to disclose material relating to the ‘Falkirk’ bug. This was a serious omission and one which, had it not occurred, may have provided the defence with reason to call their expert witnesses. For that reason alone I am driven to the conclusion that the Falkirk material should have been disclosed.

49. As for the Second Sight Interim report, I am of the view that, given the failure to disclose the Falkirk material, the Second Sight Interim report should also be disclosed, if only because, when taken together with the non-disclosed Falkirk material, there is a possibility that it *might* cast doubt on the safety of the conviction for theft but not false accounting (although it may go to the issue of sentencing on these charges).
50. The Helen Rose report goes solely to Gareth Jenkins’ knowledge of Horizon concerns arising some 5 years after the events considered in Mr Hosi’s trial, and his credibility as an expert witness in 2013. Given that Mr Jenkins did not appear as a witness in Mr Hosi’s case, did not provide an expert witness statement and did not comment on issues of Horizon integrity and reliability in his informal note, I conclude that material which might undermine Mr Jenkins’ credibility today cannot now meet the test for disclosure.

### **Conclusion**

51. For the reasons set out in the preceding paragraphs I advise that:
  - I) Material relating to the so-called ‘Callender Square’, or ‘Falkirk’ bug, should be disclosed to Mr Hosi’s representatives;
  - II) The Second Sight Interim report should be disclosed to Mr Hosi’s representatives;
  - III) The Helen Rose report does not meet the test for disclosure in this case and should not be disclosed to Mr Hosi’s representatives.

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Simon Clarke  
2014 Barrister  
Cartwright King Solicitors

1<sup>st</sup> May