

## Pre Petition Report

<b>Date of Report</b>	2 August 2016
<b>Name of PO/Depute</b>	Angus Crawford
<b>Name of Counter signatory</b>	Anne E Sweeney
<b>Legacy / KPI Report</b>	n/a
<b>PF Office</b>	GLASGOW SOUTH (G) DIVISION
<b>PF Ref</b>	GG14024535
<b>Name(s)</b>	RAUF AKHTAR-BASHIR
<b>Charge(s)</b>	
<p>(001) On various occasions between 8th August 2012 and 26th March 2014 both dates inclusive at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, G42 0EH and elsewhere you RAUF AKHTAR-BASHIR did while acting in your capacity as Subpostmaster of Toryglen Post Office, 27 Glenmore Avenue, Glasgow, G42 0EH embezzle One Hundred and Seventy Nine Thousand, One Hundred and Twenty Six pounds Nine pence (£179,126.09) of money.</p> <p>(002) On various occasions between 9th October 2013 and 26th March 2014 at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, you RAUF AKHTAR-BASHIR did conceal, disguise, convert and transfer criminal property within the meaning of the aftermentioned Act namely Five Hundred and Fifty Four Thousand Six Hundred pounds (£554,600) in that you did use your position of trust as Subpostmaster at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, to transfer Five Hundred and Fifty Four Thousand Six Hundred pounds (£554,600) of money into your Santander Bank Account number <b>GRO</b>; CONTRARY to the Proceeds of Crime Act 2002, Section 327(1) (a)</p>	
<p><b>Enclosures</b> Details of enclosed documents should be recorded here, and should <b>ALWAYS include items 1, 2 and 3</b>. Items 4, 5, 6 and 7 should be included where appropriate.</p> <p>Select which documents have been included.</p>	
1. Any/all previous CCI	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. SPR	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Initial Report to NSCU	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Statement and/or precognition	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
5. Forensic/medical/computer report	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
6. Draft charges	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
7. Any other documents considered relevant in light of CCI? If <b>YES</b> provide details of documents below	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

## Pre Petition Report

<b>History of case</b>	
1. Date of the offence	8 August 2012
2. Date matter was reported by the police	
3. Date case was reported to NSCU	N/A
4. Date CCI was issued	N/A
5. Date was reported to NSCU (if reported on more than one occasion)	N/A
6. Date extensions to reporting timescale was sought (if relevant)	N/A
7. Agreed revised report date (if relevant)	N/A
<b>Factual/Evidential Consideration</b> Provide a brief summary of CCI, the action taken and the resulting evidence.	
N/A	
<b>Analysis</b> The analysis should address the issues highlighted in Crown Counsel's Instructions and also Chapter 1 and Chapter 3.120 to 3.126 of the Sexual Offences Handbook	
<b>Date of Report</b>	2 August 2016
<b>Name of PO/Depute</b>	Angus Crawford
<b>Name of Counter signatory</b>	Anne E Sweeney
<b>Legacy / KPI Report</b>	n/a
<b>PF Office</b>	GLASGOW SOUTH (G) DIVISION
<b>PF Ref</b>	GG14024535
<b>Name(s)</b>	RAUF AKHTAR-BASHIR
<b>Charge(s)</b>	
(001) On various occasions between 8th August 2012 and 26th March 2014 both dates inclusive at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, G42 0EH and elsewhere you RAUF AKHTAR-BASHIR did while acting in your capacity as Subpostmaster of Toryglen Post Office, 27 Glenmore Avenue, Glasgow, G42 0EH embezzle One Hundred and Seventy Nine Thousand, One Hundred and Twenty Six pounds Nine pence (£179,126.09) of money.	
(002) On various occasions between 9th October 2013 and 26th March 2014 at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, you RAUF AKHTAR-BASHIR did conceal, disguise , convert and transfer criminal property within the meaning of the aftermentioned Act namely Three Hundred and Seventy Three Thousand Four Hundred and Sevnty Three pounds and ninety one pence (£373.473.91 )of money in that you did use your position of trust as Subpostmaster at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, to transfer Three Hundred and Seventy	

## Pre Petition Report

Three Thousand Four Hundred and Sevnty Three pounds and ninety one pence (£373.473.91 )of money into your Santander Bank Account number <b>GRO</b> ; CONTRARY to the Proceeds of Crime Act 2002, Section 327(1) (a)	
<b>Enclosures</b> Details of enclosed documents should be recorded here, and should <b>ALWAYS include items 1, 2 and 3</b> . Items 4, 5, 6 and 7 should be included where appropriate.  Select which documents have been included.	
1. Any/all previous CCI	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. SPR	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
3. Initial Report to NSCU	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
4. Statement and/or precognition	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
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6. Draft charges	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
7. Any other documents considered relevant in light of CCI? If <b>YES</b> provide details of documents below	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>History of case</b>	
1. Date of the offence	8 August 2012
2. Date matter was reported by the police	24.12.14
3. Date case was reported to NSCU	N/A
4. Date CCI was issued	N/A
5. Date was reported to NSCU (if reported on more than one occasion)	N/A
6. Date extensions to reporting timescale was sought (if relevant)	N/A
7. Agreed revised report date (if relevant)	N/A
<b>Factual/Evidential Consideration</b> Provide a brief summary of CCI, the action taken and the resulting evidence.	

## Pre Petition Report

n/a
<b>Analysis</b> The analysis should address the issues highlighted in Crown Counsel's Instructions and also Chapter 1 and Chapter 3.120 to 3.126 of the Sexual Offences Handbook
<b>Charge1: Embezzlement.</b>  Rauf Akhtar Bashir was contracted as a Sub Postmaster to provide Post Office services at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, from 26th July 2007 to 26th March 2014. This was a sub post office within the witness Tariq's general convenience store which also housed an ATM for which the accused was responsible.  As sub postmaster the accused was in a position of trust and had signed a contract which detailed his duty of care with regards to Post Office stock and money. By signing the contract, he agreed to be bound by the contract, rules and instructions contained in the Book of Rules .In addition S12 of the contract forbade him from using Post office money for his own private use. As part of his duties the accused was responsible for signing off the daily and monthly balance sheets in relation to the ATM, cash in tills and stock. He had a responsibility to ensure that the cash and stock was accounted for and was held securely at all times.  One of the Post Office functions is that it accepts deposits for most of the UK Clearing Banks. The method by which this is effected is that the local Post office branch accepts cash only deposits from business customers using the customer's bank card. The customer hands over the cash and card to the clerk and the clerk checks the amount, swipes the card and enters the amount onto the Horizon system. The customer is asked to confirm the amount on a PIN pad on their side of the counter and if they agree the press enter and the money is transferred to the respective bank and the system automatically prints a receipt. The money received from the customer by the clerk is then bagged , collected and delivered to the Central Post Office reserve. The accused was a business customer of Santander and held an account number 6640001in the name of R Bashir t/a Toryglen Post Office and as a result he used this facility in his own post office.  <b>The Horizon system</b>  The Post Office accounting system is known as Horizon. This is the computerised system used to input all transactions generated through the local Post Offices. The Horizon system consists of two separate parts.  Part: 1 is known as the BOI system. This system monitors the amount

## Pre Petition Report

of cash held within the ATM machine.

Part: 2 is known as the AA system. This system monitors the stock and the cash held in the cash registers and the safe.

Each member of staff has a unique personal ID number and a personal password to allow them access to the system. In respect of this case the witnesses Malcolm and Tariq had ID numbers and passwords as did the accused :

1. ADN001/ADN003-TARIQ
2. JMA003/JMA004- MALCOLM
3. RBA003- BASHIR

The witnesses Tariq and Malcolm confirmed that they did not provide their passwords to any other person although Malcolm did state that she thought Tariq used the accused's password and code as he had forgotten his own, the witness Tariq refutes this.

The witness Malcom was the Post Office Clerk and worked within the Post Office on a daily basis, the witness Tariq owned the store and mainly worked within the main shop and only occasionally worked in the Post Office to assist during busy periods. He was responsible for the filling the ATM which he stated that he did in the witness Malcolm's presence with the witness Malcolm being responsible for declaring the figures for the ATM on the Horizon system which is taken from a print out from the ATM. Both witnesses stated that the accused was responsible for completing the monthly trading period balances for both the Post office and the ATM. The witness Malcolm stated that the last occasion that the accused worked at the counter was January 2014.

The last audit prior to the audit on 26 March 2014 was on 7 August 2012 when a £27.86 surplus was recorded. This audit report is a production in the case and is the last known date that the accounts for the Toryglen Post Office were correct.

### **Discovery of embezzled funds**

A routine audit took place on Wednesday 26 March 2014 by witnesses Guthrie, Burke and McConnell, auditors and employees of Post Office Ltd. Prior to the audit taking place the witness Malcom advised the witnesses that she believed there to be a shortfall of approximately £70,000 and at the auditors request tried to contact the accused to ask him to attend the audit.

The auditors discovered that there was a cash shortfall of One Hundred and Seventy Nine Thousand, One Hundred and Twenty Six Pounds and

## Pre Petition Report

Nine Pence (£179,126.09). This shortfall was made up from the following.

1. ATM -£108870.

At the audit on 26 March 2016 the Horizon BOI system recorded that the ATM machine should contain £115750.00 in cash. When the cash in the ATM machine was counted it was found to contain £6880. The witness Malcolm took a daily print out of the ATM funds and entered this information into the system

2. Cash -£70,137.08.

At the audit on the 26 March 2016 the Horizon AA system recorded that the cash in hand within the post office was £101,329.48. When the cash held in the cash registers and the office safe was counted, they were found to contain £31,192.40. The branch is required to declare the cash on hand at the end of each day and log this on the Horizon system having physically counted the cash. The witness Malcolm carried out this task.

3. Stock £40.71

At the audit on the 26 March 2016, the auditors identified a difference in stock of £40.71

The auditors then contacted the witness Dailly the Post office Security Manager who attended the premises and seized cash declarations dated 26.02.14 made by the witnesses Malcolm and the accused through the Horizon system as shown by their ID numbers JMA003 and RBA003 respectively and the Horizon receipts for Santander Bank deposits for the period 29.10.13-04.02.14 and thereafter reported the matter to the police.

On 26<sup>th</sup> March 2014 the accused contacted the witness Dailly and stated that he would return on 28<sup>th</sup> March to Glasgow as he was in Manchester. At this time the accused stated to the witness Dailly that "he'd lost control". The witness Dailly invited the accused for interview and informed him of his rights. The witness Dailly contacted police witness Sneddon and it was agreed that the Post Office staff would conduct the interview.

Bashir was subsequently suspended on 26 March 2014 and his contract was terminated on 24 June 2014.

### **Police/Post Office Investigation**

The witness Dailly created a Schedule of Santander deposits made at the Toryglen Post Office between 07.01.14-20.03.14 using the Credence

## Pre Petition Report

Information Management system which holds the previous 90 days of Horizon data. This schedule showed the "deposits" were made to the accused's Santander account and identified who had made those deposits. It was identified at that stage that the accused had made £294,500 worth of deposits, the witness Malcolm had made £55,200 of deposits and the witness Tariq had made £13000 worth of deposits.

The witness Dailly attended at the witness Malcolm's home to take a statement. She advised the witness Dailly of the processes and her remit and in relation to the cash deposits into the accused's account, she stated that the accused had phoned her at the Post Office several times and asked her to take his bank card from the back office and swipe it through Horizon to make a deposit. She stated that the accused told her he would settle the amounts at the end of February 2014 but did not. The witness Tariq also provided a statement stating that he had made the deposits at the request of the accused who again told him that he would put the money in the till later. Both of these witnesses can state that Bashir did not provide the corresponding amounts at the time they were asked to process the transactions and have no knowledge of the money being physically deposited at a later date.

The witness Dailly also reviewed the cash declarations for the 26.02.14 made by the accused and the witness Malcolm. It was shown that the witness Malcolm entered a cash declaration of £6784.82 at 17.35 hours and the accused made an inflated declaration at 19.05 hours which showed a declaration of £51784.82. The identification of who made the entries came from the unique ID and password. The witness Malcolm stated that she counted the cash and made the declaration at the end of the day, she also stated that the accused had not worked in the Post Office since January 2014.

The witness Dailly also received the Cash Management Call logs which showed that the accused had made repeated requests for extra money to be sent to the Post Office. On numerous occasions between 28.3.2013 and 27.3.2014 call logs and notes prepared by the Post Office call centre show that staff members from the post office at Toryglen called the post office central office to request increased cash deliveries. The witnesses Malcolm and Tariq don't speak to making these calls therefore the inference is that it was the accused requesting the cash deliveries. The call handler on numerous occasions refused to increase the cash deliveries on the basis that the Horizon system showed that the branch had a cash surplus.

### **Trading Accounts/Daily/Weekly Balances**

The accused was responsible for submitting the Trading accounts for the

## Pre Petition Report

period 25.09.13-26.02.14; they showed that the accounts balanced which was at odd with the auditors' findings.

The accused was also responsible for signing off on the office balances at the end of each month. The accused signed off on the balances through the Horizon system by entering his Unique Identification number. The witness Malcolm stated that she would complete the nightly cash in hand balances but that it was the accused's responsibility to sign off and ensure the cash and the balance shown on the system tallied.

### **Bank Statements of the Accused**

The witness Dailly received the statements from three of the accused banks including Santander. The witness Dailly analysed these statements in conjunction with the information provided from the Credence system which holds Horizon data. From this analysis, the witness Dailly established that between 09th October 2013 and 20th March 2014 fifty six deposits all of over one thousand pounds were made at Toryglen Post Office, 27 Glenmore Avenue, Glasgow, in total Five Hundred and Fifty Four Thousand Six Hundred pounds (£554,600) was deposited into the accused's Santander Bank Account No: [GRO] via the Post Office Horizon System. It was noted that withdrawals, bill payments and transfers to his other accounts were made either the same day or the following day that the deposit from the Post Office into his account was made.

### **Interview of the Accused**

The accused initially attended for interview without legal representation on 01<sup>st</sup> April 2014 and as a result of being informed of his legal rights decided to seek legal representation and presented for interview on 23<sup>rd</sup> April 2014 with his solicitor Aamer Anwar. He was interviewed by witnesses Dailly and Bradshaw. The accused confirmed that he had been Sub postmaster at the Post office since July 2007 and provided some information in relation to his training before taking advice from his solicitor after which he stated "no comment" to questions posed in relation to the bank cash deposits, requests for additional funds, discrepancies in the cash declarations and all other questions asked in relation to his duties and responsibilities. At the end of the interview the accused provided mandates relating to four of his accounts including the Santander account.

In analysing the information and data to ascertain a reason for the shortfall the witness Dailly identified that there were two ways in which the accused could have embezzled the money those being -

## Pre Petition Report

i) That the accused was stealing money from the cash registers/safe and ATM or:

ii) that the accused had inflated the amount of money, via inputting false information into the Horizon system, to cover up shortages elsewhere arising from the accused failing to make the corresponding cash deposits in respect of the deposits from the Post Office to Santander business account.

In analysing the evidence in relation to the accused stealing money from the ATM, the Crown have no evidence to show the accused was doing this other than proof of exclusion evidence. Both witnesses Tariq and Malcolm deny any responsibility for the shortages. They have provided evidence which points to the accused as the person responsible for the shortages.

It is possible that Bashir removed cash from the ATM machines and from the cash in hand held in the cash registers and the safe. However this is unlikely given the evidence for scenario: 2.

In relation to the second scenario there is compelling evidence that the accused used the mechanism of inflating the figures and depositing funds into his Santander account. The evidence in relation to the inflation of figures is

1. On 26 February 2014 at 17.35 pm Joyce Malcolm using her unique ID number inputted into the AA Horizon system that the amount of cash in hand was £6784.82.

2. At 19.05 hours on the 26 February 2014 the above balance was changed in the system to show that the balance in the AA Horizon system was £51784.82. The accused Bashir's unique ID number was used to intromit with the system at this time. This is a compelling piece of evidence pointing to the fact that Bashir was manipulating the system to cover up the shortage.

3. Cash declarations made on the day of the audit by the witness Malcolm were checked and found to be correct by the auditors witnesses Guthrie, McConnell and Burke and therefore supportive of fact she was recording accurately.

4. On numerous occasions between 28.3.2013 and 27.3.2014 call logs and notes prepared by the Post Office call centre show that staff members from the post office at Toryglen called the post office central office to request increased cash deliveries. The call handler on numerous occasions refused to increase the cash deliveries on the basis that the Horizon system showed that the branch had a cash surplus. Again this is a clear indication that the cash in hand figure was being

## Pre Petition Report

inflated within the system to cover up shortages. Clearly there would be no need to have an operating cash increase if as the system indicated that the branch had enough cash in hand to cover business needs.

The evidence in relation to the accused receiving Post Office funds into his Santander Account comes from the following:

The witness Tariq speaks to the accused asking him on two occasions, via telephone, to make two deposits amounting to £13000.00 into his (the accused) Santander account and said he would put the money in later.

The witness Malcolm can speak to the accused telephoning her on eleven occasions and asking her to deposit money amounting to £54000.00 into his Santander bank account via the Post Office system stating that he would put the money in later.

Both these witnesses can state that the accused did not provide the corresponding amounts at the time they were asked to process the transactions and have no knowledge of the money being physically deposited at a later date.

In addition on analysing the accused Santander accounts the witness Dailly found between 29th October 2013 and 20th March 2014 fifty six (56) deposits all of over One thousand pounds (£1,000) were made at Toryglen Post Office, 27 Glenmore Avenue, Glasgow. In total Five Hundred and Fifty Four Thousand Six Hundred pounds (£554,600) was deposited into the accused's Santander Bank Account No:

**GRO** via the Post Office Horizon System. The witness Dailly did not have the corresponding Horizon daily balance sheet to check that the full cash amount of these electronic deposits less the shortfall of £179,126.09 was physically deposited into the Post Office and based this opinion on the evidence of the witnesses Malcolm and Tariq advising that the accused requested the deposits and did not provide the corresponding credit monies into the post office account. It is suspected that the accused did not deposit the cash amounting to £179,126.09 into the Post office reserves but simply created an electronic credit entry.

### **Evidential Difficulties**

#### **1. The Horizon Accountancy System.**

This case was reported by the Post Office in on 24 December 2014. After initial investigations and discussions with the reporting officer it was discovered that there was significant criticism in respect of similar

## Pre Petition Report

English prosecutions of the Post Office accounting system known as Horizon.

The criticism surrounded issues with respect to the system's integrity and accuracy in respect of the recording of information .It was found that the system was not recording accurately monies deposited etc. The reporting officer stated that he would be unable to confirm the accuracy of the information held within the system should he be called as a crown witness. He also confirmed that the Post Office would not be able to provide an expert witness who could speak to the systems accuracy.

At that time it was decided not to proceed with this case given the above information. The solicitor for the Post Office in Scotland Laura Irvine had a meeting with Dawn Lewington and Mhairi Boyle in late 2015 regarding the issues involving the prosecution of Post Office cases in Scotland. As a result of that meeting CC instructions were given in early 2016 to prepare a Pre-Petition precognition.

Since these instructions I have been in correspondence with the Solicitor for the Post Office in Scotland requesting further information with respect to the Horizon system. I enclose the following e-mail received from Laura Irvine , Solicitor acting for the Post office Ltd received on 30 August 2016

*"I refer to your email to Robert Daily dated 3 August 2016 and our conversation about the case against Mr Bashir concerning Toryglen Post Office. Post Office Limited is currently defending a claim brought in the English High Court by (at least) 198 claimants, and is also assisting the Criminal Cases Review Commission with its review of 26 prosecutions of former Post Office agents. Both of these matters concern allegations that the 'Horizon' computer system supplied by Fujitsu and the processes associated with its use are not reliable. Post Office is committing significant resource to dealing with these matters, and needs to do so in a consolidated and coordinated manner which focusses on the High Court action and CCRC reviews. Accordingly, while these matters remain live, Post Office will not be able to support external matters where Horizon is challenged, e.g. by providing a subject matter expert on Horizon to support a prosecution brought by a public prosecution service. Post Office accepts, regrettably, that this may mean that for a period of time, certain criminal prosecutions which could otherwise proceed may not now do so. We appreciate the frustration that this may cause, and are grateful for your cooperation while we look to address finally the complaints made about Horizon."*

### **2. Method of Embezzlement**

Whilst not fatal to the charge there is no clear indication of the method

## Pre Petition Report

by which the accused embezzled the money whilst the most obvious method was by way of obtaining the money through deposits to his Santander given that the accused could have facilitated the embezzlement by use of the electronic system there are still question marks in respect of the other methods as detailed above.

The ambiguity in relation to the mechanism may become clearer as the reporting officer has still to obtain and submit the trading account and corresponding balance sheets in relation to the ATM and bank deposits which may contain the information to crystallise the method. However as will be discussed in the analysis of evidence due to the flaws in the Horizon system this has not been obtained at this time.

### **Analysis of Evidence**

#### **Charge One – Embezzlement**

##### **Mens rea**

The Crown can prove that the accused intended to appropriate the property of the Post office without its consent from the fact that the accused signed the Post Office contract confirming that he would be bound by the rules, in addition, s12 of that contract specifically stated that the accused could not use the post Office funds for personal use. Therefore the fact that the accused used the depositing system for his own business use was a clear infringement of that clause and as such the accused knew that the Post Office would not allow him to use this facility.

##### **Actus Reus**

The accused admitted in the course of the interview that he was employed as the Sub postmaster and as such had a duty to account for the stock provided to him by the Post Office as shown in the contract between himself and the Post Office .His duty was to use this cash, stock and debit facility to provide services to the public and business customers and to account for keeping said funds and services secure at all times.

The witnesses Malcolm and Tariq can speak to working within the post office and the accused acting as Sub postmaster; as such the accused had overall responsibility for the stock as evidence by him being responsible for signing off on the trading accounts etc. The witness Malcolm and Tariq speak to the accused working in the Post Office although the witness Malcolm stated that he hadn't worked since January 2014.

The difficulty in proving the appropriation lies with the fact that the

## Pre Petition Report

Horizon system through which all the financial information comes is neither reliable nor credible. There is evidence from the audit that there is a shortfall however, the information from which the auditors are basing their findings and the evidence from which the witness Dailly uncovers during his investigation comes from this system. Given the deficiencies in the system as previously described it is submitted that the evidence which flows from this system cannot be relied upon as the Crown cannot provide a witness to confirm the accuracy and integrity of the system.

The Crown is also relying on the modus of the offence being proved from the information provided by this system.

In relation to the most likely of scenarios put forward by the witness Dailly that the accused deposited sums into his Santander account and did not make the corresponding credits to the Post office account, the proof of that fact comes from the Horizon system. The trading accounts and daily entry sheets which would show the deposits of lack thereof are produced from this system and would be used to cross refer with the information contained in the statements of the accused's Santander account thus the Crown would still be relying on the information coming from the Horizon system.

In relation to the other scenario put forward by the witness Dailly that the accused stole the money from the cash registers and ATM again all of the information in relation to the funds comes from the Horizon system.

Therefore, given the fact that the Post Office will not provide a witness to speak to the accuracy of the information contained/produced by the system the Crown cannot prove that the appropriation took place during the course of a transaction which the accused was authorised to conduct.

Given the evidence of the witnesses Tariq and the auditors, it is clear that there was a shortfall of funds and by use of proof of exclusion evidence the inference is that the accused committed the theft and that the method by which he appropriated these funds was through utilising the Post Office funds to deposit monies into his Santander business account. However it is submitted that the Crown would still falls short in relation to the proof of the case as would still need the information provided from the Horizon system.

It is respectfully submitted that even if the Crown were to await the outcome of the English cases it appears likely that the Post Office will never commit to providing a witness to speak to the accuracy and integrity of the Horizon system which is at the nucleus of the proof of

## Pre Petition Report

the Crown case. It is submitted that the insufficiency of evidence will not be overcome and therefore in all of the circumstances the recommendation is to take no proceedings in respect of the accused.

### **Charge:2**

#### **S327(1)(a) Proceeds of Crime Act 2002**

At present, apart from the money that the accused is alleged to have embezzled from the Post Office, there is no indication that the other money deposited into the Post Office £375,473, 91 (the difference between the shortage and the total amount shown to have been deposited in the Horizon System being £554,600- £179,126.09 was criminal property and that it was his benefit from criminal conduct or that he knew or suspected it came from criminal conduct. We do not know what the source of the £373.473.91 is and although it looks highly suspicious we have no idea if it came from criminal conduct.

In relation to a POCA charge in relation to the £179,126.09 again there is an insufficiency of evidence due to the evidential difficulties with the Horizon system as the Crown would be looking to lead evidence of the information from the Horizon system in order to prove that the money was criminal property.

### **Recommendations**

It is submitted that there is an insufficiency of evidence to proceed against the accused for the crime of Embezzlement given the issue surrounding the accuracy of the Horizon system and the present position of the Post Office concerning the prosecution of Post Office cases.

Given the fact that the Post Office are unable to provide an expert witness who can speak authoritatively on the accuracy of their accountancy system a prosecution cannot be achieved and it is unlikely that even after the English review the Post Office will be able to counter the attack to the integrity of their system given they are in the process of replacing said system with another product.

I would therefore respectfully recommend that no proceedings in respect of the accused proceedings are taken.

### **Recommendations**

Precognoscer's recommendations

## Pre Petition Report

No Pro- Insufficient evidence
Counter signatory Comments Edit statement below as required
The content, in particular the analysis and recommendation, has been discussed and agreed with the depute  Anne E Sweeney 04.11.16