

CROWN COUNSEL INSTRUCTION	
CASE NAME:	Christine Gourlay
Reference Number:	HM13003852
Date received :	11 December 2015
Charges:	Embezzlement
Nature of Instruction Sought:	Crown Counsel's instructions are sought as to further procedure in the above case.
<u>Background</u>	<p>This case is a Sheriff & Jury case. Crown Counsel's instruction is being sought as to further procedure because of concerns that have been raised about the reliability of the Post Office electronic system, Horizon. In October I was asked to meet with representatives of the Post Office and their English and Scottish solicitors. As a result of the discussions at that meeting, Stephen McGowan has asked me to report to Crown Counsel all live and pending Post Office cases. Some of these cases have been reported by the Post Office as a specialist reporting agency. These cases generally arise from internal Post Office audits that show a discrepancy in branch funds. Other cases are reported by the police.</p> <p>The Gourlay case is the only one of these cases where proceedings have been initiated. Mrs Gourlay appeared on petition on 30 January 2015 and, if she is to be indicted, the case must be indicted on Monday 14 December. The case has been reported to me today. The allegation is that Mrs Gourlay has embezzled some £45,000 of money from a Post Office in Hamilton where she acted as manager.</p>
<u>Meeting with the Post Office</u>	<p>The purpose of the meeting with the Post Office in October was to receive from them an update in relation to concerns that had arisen with their Horizon electronic system. Horizon is the electronic system that records all transactions in Post Office branches across the country. I attach a note of this meeting. In short the Post Office position was that the independent body that had reported on the Horizon issues, Second Sight, has said that Horizon was "fine" and that they had said as much to a Parliamentary Select Committee and the BBC Panorama programme. (The Post Office relationship with Second Sight broke down because they considered Second Sight had gone beyond their remit in their reports.) Nonetheless the Post Office had decided to replace the entire system in 2016. The Post Office had tried to identify a "subject expert" who would be able to look at Horizon and be able to give evidence in criminal cases as to Horizon being reliable. They have not been able to identify such a witness.</p> <p>This meeting was slightly confusing in that the Post Office's initial position was that they had stayed <u>all</u> prosecutions in England and Wales and would not prosecute the cases we have if they were in England and Wales. However they then went on to say that they were in fact prosecuting 2 cases in "category 3" (which means the case does</p>

not relate to Horizon but it is possible that the defendant will claim Horizon was a factor - it seems there are 4 categories of case) and are actively investigating a "category 4" case (cases where there can be no suggestion that Horizon was involved). In the end they said they are still making judgements on a case-by-case basis but I had the strong impression that they are never going to prosecute any case based on Horizon evidence. They were fairly tight-lipped about the position with cases reported to the CPS by the police, saying they had met with the CPS and given advice but it was for them to decide what to do.

Following the meeting the Post Office's Scottish agents, BTO, emailed to say that the Post Office "would be very uncomfortable if a policy decision was taken in relation to Post Office cases not proceedings, which was then publicised throughout the service. I am sure you picked up on the issues that could potentially cause for PO but I was asked to confirm this in an email. I got the impression that was not your thinking anyway". This was slightly surprising as, effectively, the Post Office have made this same policy decision about all of their England & Wales cases. The email may stem from the Post Office's worry that information is leaked and Post Office staff learn there is no chance of prosecuting them for Horizon shortfalls and advantage will be taken. A decision was made by Stephen McGowan that all Post Office cases sitting with COPFS ought to be reviewed and Crown Counsel's instruction sought.

Gourlay case

Mrs Gourlay was manager of the Hamilton Post Office branch. In June 2012 a Post Office official based at Post Office headquarters at Chesterfield became aware that 2 "positive adjustments" had been carried out at the Hamilton branch on 20 June adding to the Horizon system £48,300 worth of stamps. A positive adjustment is made when the stock actually in the Post Office is greater than is recorded on Horizon. The official rang the branch to query this and spoke to a "Christine" who gave 2 different explanations as to why the adjustment had been made - firstly that the stamps had been bought back from a customer and secondly that they had been purchased from another branch. Mrs Gourlay was the only person called Christine who works in the branch and there is evidence from other staff that she was very much in charge and liked to take all telephone calls herself. Mrs Gourlay does not admit that she was party to this call.

Reading between the lines, this incident was the catalyst for an audit that was carried out at the branch by Post Office officials on 11 July 2012. It was found that the stock for which Mrs Gourlay had responsibility did not balance with what was shown on the Horizon system. A relatively small dollar amount of cash was missing, though that was soon explained; an amount just over £2,000 was missing, and £43,800 worth of stamps shown on the system were missing. Mrs Gourlay was on leave at this time. The practice in the branch was that staff would put their stock in a pouch and seal it and a key was placed in a sealed envelope. A member of staff speaks to Mrs Gourlay's key being in a signed, sealed envelope. There is other evidence that the security of the sealed pouches could be, and on occasion was, overcome using scissors.

Further enquiries showed that, earlier in the year, there had been questionable transactions for stamps at the branch. The system showed these had involved someone using Mrs Gourlay's log-on number. The evidence generally is that members of staff kept their log-on numbers to themselves though it has been suggested the postmaster's wife was aware of Mrs Gourlay's number.

It is difficult to be clear about exactly what these transactions involved. The original precognoscer of the case had meetings with the Post Office reporting officer and may have gleaned from him a clearer picture of what took place. Unfortunately she is now on sick leave. Theresa McConologue, who took over the precognition at a late stage, also discussed this with the RO. I have spoken with Theresa and I know that despite her conversation with the RO she considers the picture is a confusing one.

At the end of April 2012 the Horizon system shows that someone logged on with Mrs Gourlay's number conducted 12 transactions for the sale of stamps with a total value of over £45,000. Most of the transactions are recorded as taking place after hours. When she was interviewed by the Post Office Mrs Gourlay suggested that these transactions would have been adjustments as opposed to real sales. There was also a suggestion that they could have been quotes. Generally, Mrs Gourlay speaks of there being an element of confusion about stock levels and being advised by HQ to make various adjustments to balance stock. It seems to me that she does not accept that the fact that her log-in number was used to make a transaction means that she made the transaction. In a meeting with the Postmaster she blamed the Horizon system for the deficit in stock identified during the July 2012 audit.

There are a series of transactions involving stamps on 12, 13 and 20 June 2012. The transactions involve stamps worth £30,000 and £48,000 respectively being "reversed out" of the system and then being sold to cash. What this means practically is unclear.

In terms of her own auditing responsibilities Mrs Gourlay said that she had not checked her stock balance before she finished for her holiday on 30 June and accepted that this was not good practice. She said she had not checked this for 2 or 3 weeks. I am told there is evidence that she signed a Final Balance sheet for her stock on 6 June which recorded that the Post Office held only 13 sheets of first class stamps and 7 sheets of second class stamps. This accords with the amount of stamps found in the Post Office when the audit was carried out. Her signed Final Balance for 13 June showed that there were 567 sheets of first class stamps and 307 sheets of second class stamps. At the time of the audit Horizon recorded that there were 565 sheets of first class stamps and 307 sheets of second class stamps (though of course this was completely inaccurate). It seems to me that Mrs Gourlay does not accept that she must have checked the numbers of stamps actually held in the Post Office when she signed the sheets off.

An inference can be drawn that the large number of stamps that seem to have been taken out of, and added back into, the Post Office system never existed in the branch. They do not appear to have been supplied by HQ. Staff have commented that it would not have been possible to fit these numbers of sheets of stamps into the stock pouch and that there was no need for the office to have had that amount of stamps. Excess stock of stamps would be remitted to HQ.

The explanation offered up by the Post Office is that Mrs Gourlay embezzled money and inflated the amount of stamps held in stock to disguise the missing money. Mrs Gourlay suggests that sales have not been real sales but have represented adjustments to the system that HQ recommended to deal with difficulties in balancing the system. She also suggests that the missing stamps could have been remitted back to HQ without a remittance form identifying them as having come from the Hamilton branch. She denies having stolen money. The precognoscer considers that there ought

to have been a more complete accounting exercise done following the audit to show what the position was in the branch as a whole. I think that a key element that is missing in this case is any evidence that Mrs Gourlay was enriched. I cannot see that any financial investigations have been done to trace whether Mrs Gourlay received large sums into her bank account or was spending large amounts of cash. There is also no evidence from her colleagues that Mrs Gourlay acted in a suspicious or underhand way: on the contrary they seem to have regarded her as zealous and hard-working.

In my view the circumstances here are suspicious, particularly the evidence from Rachelle Shimwell that she enquired about large adjustments and was given conflicting accounts for what had happened by "Christine"; and the evidence (from Horizon) of the similarity of sums involved. Mrs Gourlay's various explanations are not wholly convincing. I agree, however, that there is insufficient credible and reliable evidence on which to found a prosecution.

The main difficulty is with the Horizon system. From Mrs Gourlay's remarks to the Postmaster it can be anticipated that she would challenge the admissibility of evidence drawn from this system. There is no witness to speak to Horizon being reliable. All of the evidence that there was a deficit and about the transactions involving stamps comes from Horizon.

Recommendation

It is respectfully recommended that Crown Counsel instructs that no further action is to be taken in this case on the basis that, given the difficulties with the Horizon system, there is not sufficient reliable evidence against the accused.

Mairi Boyle, Legal Assistant to the DSC

Ext:

Date: 11 December 2015

Advocate Depute : Richard Goddard

Date: 13.12.15

CC Instructions :

I agree with the recommendation in this case.

It appears that any prosecution would be wholly reliant upon evidence gleaned from the Horizon system. There appear to have been fundamental problems with the reliability of the system in England and Wales. Further, there is no witness available from the Post Office to explain the workings of the system or vouch its reliability.

There are further difficulties in addition; there is no evidence beyond the Horizon records of the accused being suddenly enriched or otherwise ever having received such a significant sum of money. There is no positive evidence to demonstrate that the stamps were not returned as the accused

claimed. The stock unit was demonstrably inaccurate in relation to the five hundred dollars, which casts further doubt upon the reliability of the system.

Whilst the circumstances as a whole can be said to be suspicious, it would not be in the public interest to proceed in the absence of other reliable supporting evidence.