

**POST OFFICE LTD – CASE REVIEW**

**R. v. ANGELA MARY SEFTON & ANN NIELD**

**Liverpool Crown Court**

**Offence**

1. On the 3<sup>rd</sup> May 2013 these defendants were sentenced to the following penalties:

Angela SEFTON        -        6-months imprisonment suspended for 12-months; attendance at Probation Service supervision, 20 sessions.

Ann NIELD            -        6-months imprisonment suspended for 12-months; attendance at Probation Service supervision, 20 sessions.

Both defendants had pleaded guilty to a single charge of False Accounting, alleging that between 1<sup>st</sup> January 2006 and 6<sup>th</sup> January 2012 they falsified Horizon records relating to the receipt of £34,115.50 from Animals in Need.

**Case history**

2. The defendants appeared before the Fazakerley Magistrates Court on 24<sup>th</sup> April 2012. They gave no indication of their intended pleas 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 21<sup>st</sup> June 2012.
3. The matter next came before the court for a Pleas and Case Management Hearing at Liverpool Crown Court on the 9<sup>th</sup> August 2012, when the defendants entered not guilty pleas. They indicated to the court of their intention to instruct a forensic

accountant and sought disclosure of Horizon data covering the operational period of the indictment. The matter was listed for trial to commence on the 17<sup>th</sup> October 2012.

4. Because of delays in disclosure relating to defence requests concerning Horizon the trial was re-listed to commence on the 15<sup>th</sup> April 2013. On the 11<sup>th</sup> April the defendants appeared before the court seeking a 'Goodyear' indication, that is, an indication from the judge as to the highest sentence he would impose in the event of guilty pleas there and then. The Judge indicated that he would impose suspended sentences of imprisonment upon both defendants. Consequently they then both pleaded guilty to the charge. The matter was adjourned for sentence to the 3<sup>rd</sup> May 2013.
5. The defendants were sentenced as indicated in paragraph 1 above.

#### **Prosecution case**

6. The defendants Angela SEFTON and Anne NIELD worked at the Sub-Post Office in Fazakerley. The Sub-Postmaster of the Sub-Post Office, Ali ASKAR, was not involved in the day to day running of the branch; Anne Nield took the role of manager and Angela Sefton that of clerk. Together they carried out all the functions of the office. Both had considerable experience as clerks within Sub-Post Offices as each of them has worked as a Post Office Clerk for over 20 years.
7. In 2009, a shortage of £4,000 was identified. Mr Askar, as Sub-Postmaster, was ultimately responsible for the lost £4,000 but he agreed with the defendants that he would provide half of the money needed to cover the shortage and the other half should come from them. They also agreed that they would jointly shoulder responsibility any future losses
8. On the 5<sup>th</sup> January 2012 Anne Nield telephoned the Post Office Security Department and asked to speak to one of the security managers, Stephen Bradshaw, outside work hours to discuss issues at work. As a consequence an audit

was carried out at the branch the following day which revealed a surplus of £559.07.

9. In December 2012 Stephen Bradshaw, a Security Manager with the Post Office was contacted by a member of the Post Office Security team regarding a problem with missing or delayed deposits made at Fazakerley sub-post office. By the 5<sup>th</sup> January 2012 he had received a list of outstanding and delayed deposits from Santander. Whilst in the process of checking through this information he received a telephone call from Ann Neild asking if she could speak to him outside working hours about a matter relating to her work.
10. As a result of his investigation and Ann Neild's phone call an audit was undertaken at Fazakerley Post Office on 6<sup>th</sup> January 2012
11. During the course of that audit Mr Bradshaw met with Anne Nield; she handed him a letter prepared by both her and Angela Sefton and signed by both. I reproduce the relevant parts of that letter below:
  - In 2005 we had a change of computer systems by the Post Office. It occurred that we had a £4,000 shortage.
  - The Post Office said that they would leave this in abeyance for 6 months so that all work could be checked. Nobody could find the shortage so the postmaster was asked to pay it back in full.
  - Ali Asker [SPMR] said he would have to pay....half. Any future shortages would have to be paid for by us....
  - At first, we tried to make shortages good ourselves by using our credit cards.

- ...eventually we ran out of our own funds...we began to cover shortages by delaying the processing of business deposits....but we cannot go on any longer.
- We cannot explain how shortages happen, but over the years the figure has built up to £34,250 approx.

12. During a search of the premises both Angela Sefton and Ann Nield were asked to point out the location of the suppressed giro deposit slips; both indicated a cupboard containing 40 Giro deposit slips and a number of cheque envelopes. These items dealt with the cash paid-in by the Animals in Need charity; held back so as to enable the defendants to use the cash which should have gone into the charity's account to cover the losses at the office.

13. In the letter given to Mr. Bradshaw by Anne Nield the defendants explained that they have never before experienced shortage problems and did not know how the shortages had occurred.

14. In their interviews, conducted on the 20<sup>th</sup> January 2012 under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice and in the presence of their solicitor, the defendants said:

- **Angela SEFTON** explained that in 2005 they had experienced a shortage/loss of £4000, of which the sub-postmaster had agreed to carry half himself and the other half was to be repaid by the defendants.
- However, they went on to suffer further losses which they could not afford to repay.
- They began to cover the shortages by delaying the processing of giro business deposits as these were paper based and had to be entered onto the system manually. They used the cash to cover their losses, but only entered the transactions onto the system much later, after they had received further deposits. These further deposits were used to cover the earlier, held-back deposits and these further deposits too were held back for later payment.
- Gradually as more and more customers were issued with payment swipe cards which credited accounts immediately, they were left with only one customer using paper slips to make their deposits, the Animals in Need charity deposits.

- As their losses increased over time they delayed more and more of the deposits, using cash from the most recent deposits to effect the oldest retained deposit through Horizon, thereby crediting the customer's accounts much later than should have been the case.
- By the time of the audit some 40 deposit slips date stamped between 2 /9/11 and 2/12/11 and totalling £34,115.50 were being suppressed in this way.
- Ms Sefton could offer no explanation of how the losses could have increased to this amount.
- She said that neither she nor her colleague Ms Nield had contacted the Post Office helpline; they were frightened to show the losses and were afraid of the sub-postmaster.
- She denied stealing any money from the Post Office.
- She had substantial debts and was unable to repay any of the losses at present.
  
- **Anne NIELD** said that it was she who had made the call to Mr Bradshaw.
- Neither she nor Ms Sefton was able to continue holding back the giro deposits because it was affecting their health.
- She too found the sub-postmaster intimidating; she was too scared to tell him of the losses.
- She confirmed that the letter handed to Mr Bradshaw was written on behalf of both of them.
- She denied stealing any money.
- She agreed that she had not contacted the helpline.
- She was unable to repay any losses due to debts.

#### **Defence case**

15. Neither Ms. Sefton nor Ms. Nield was able to explain the shortages; they had accrued over a number of years and the only suggestion they could offer was that they may have been small counter errors accumulating over the period. Both made full and detailed admissions to False Accounting, both in their joint-letter and in interview. Neither had stolen any money.

16. In a Defence Statement dated the 18<sup>th</sup> July 2012 the defendant Angela SEFTON made specific reference to there being over 100 sub-postmasters who had instructed Shoosmiths Solicitors to pursue claims arising out of Horizon failings. In so doing she was suggesting that in her case too Horizon was at fault, although no specific allegation of error or malfunction was made. She sought details of all complaints made against Horizon since 2005 together with details of the steps taken to deal with those complaints. She also sought disclosure of the names of those Members of Parliament who had taken up complaints about Horizon operability on behalf of constituents.

17. In her Defence Statement dated the 9<sup>th</sup> August 2012 the defendant Ann NIELD stated that “...*she now believes that such losses may have shown as a result of failures in the Horizon computer system.*” She too asked for disclosure of “*Details of complaints and investigations into the Horizon computer system*”

#### **Prosecution response to defence**

18. Dr. Gareth JENKINS describes himself as a Business Architect employed by Fujitsu Services Ltd. He has worked for Fujitsu Services Ltd. on the Horizon project since 1996 and is regarded as an expert on Horizon. On the 5<sup>th</sup> October 2012 Dr. Jenkins provided an expert report detailing what he described as “...*further background information*” on the Horizon system. The statement dealt with the operations capability and function of Horizon; operating architecture; and the checks and balances built into and conducted by the system. He concluded that it was his belief that Horizon “...*will accurately record all data that is submitted to it and correctly account for it.*” In essence Dr. Jenkins was saying that there were no problems with Horizon and that at all material times it was working as it should be.

#### **Judge’s Sentencing Remarks**

19. In sentencing the two defendants the Judge said this:

*“£34,000 in general terms had gone missing from your employer and you falsely accounted to cover it up. The Prosecution case was one of False Accounting, there was not a charge of theft.*

*I confess that it is far from straightforward. I'm not in a position to pass any judgement on it. If they thought there were any difficulties with the Horizon system, I am sure the Post Office would have dealt with it.” (my emphasis)*

## **Discussion**

20. Both defendants fully admitted their false accounting in writing and in interview. Those admissions were founded upon the proposition that the shortages were inexplicable but somehow ascribable to Horizon defects. The disclosure requests made by those representing Angela SEFTON were speculative at best. Neither defendant suggested a lack or insufficiency of training; neither complained of any failure or absence of support.
21. On the basis that the defendants both readily admitted their criminality in unambiguous terms in interview, this case is not primarily about Horizon at all; it is about what they did to cover-up what they said were Horizon defects. Whether or not those alleged defects existed is not to the point – they should not have dishonestly sought to hide the matter. In those circumstances the defendant's are properly convicted. What does concern me however is the basis upon which the defendants were sentenced. In commenting that “...[i]f they thought there were any difficulties with the Horizon system, I am sure the Post Office would have dealt with it” the Judge is in effect saying that he took the view that the defendant's had taken the money. For these reasons I advise that had the Second Sight Interim report been available to us during the currency of this prosecution it would undoubtedly have met the test for disclosure to the defence, on the basis that the material may have made a difference to the sentences handed down. Similarly, the report compiled by Helen ROSE, dated the 12<sup>th</sup> June 2013 and dealing with her correspondence with Gareth Jenkins in the Lepton SPSO 191 320 case would too have been disclosable to the defence.



**Safety of Conviction**

22. 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.
23. In this case I have no doubt that, had we known of those matters identified in the Second Sight Interim report, that material should and would have been disclosed to the defence in accordance with our disclosure duties as prosecutors. For that reason alone we must inform those who represented these defendants and disclose to them both the Second Sight Interim report and the Helen Rose 6<sup>th</sup> June 2013 report.
24. I consider it quite likely that, upon receipt of this material, the defendant will seek the leave of the Court of Appeal to appeal his conviction. Where a defendant seeks leave the Court of Appeal will, often before the grant of any leave, invite the prosecution to comment upon the application.
25. I advise that, should we be so invited and/or should the defendant be granted the requisite leave, we oppose his the grant of leave and any substantive appeal, on the basis that the conviction may properly be regarded as safe for, amongst other reasons, the following matters:
- i. By their guilty pleas they both admit having committed the offence of False Accounting. I have no doubt that both would have been advised that:
    - a. By pleading guilty they were admitting guilt;



- b. they should only enter a guilty plea if they were truly guilty, as indeed on their accounts they are;
  - c. they should not plead guilty if they were in fact not guilty;
  - d. they should not plead guilty solely or mainly in order to achieve a lesser sentence in circumstances where they were not guilty.
- ii. Their admissions, both in writing and in interview, are unambiguous and complete. Regardless of the *cause* of their criminality they nevertheless took an affirmative and continuing decision to dishonestly mislead.

### **Conclusion**

26. This is a case in which, had we been possessed of the material at the relevant time, we should and would 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.
27. Accordingly our duty is now to place the defence on notice of this fact and to serve on them those documents. I advise that we comply with that duty in this case.
28. Should the defendant be granted leave to appeal against his conviction, we should oppose the appeal.
29. Subject to 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.

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Simon Clarke  
Barrister  
Cartwright King Solicitors

17<sup>th</sup> July 2013