

POST OFFICE LTD – CASE REVIEW

R. v. DAMIAN PETER OWEN

Mold Crown Court

Offence

1. On the 7th December 2011 this defendant was convicted after trial of an indictment containing one count of theft. That charge alleged that between the 19th April 2009 and the 10th August 2010 he had stolen the sum of £24,867.99 from Post Office Ltd. On the 23rd December 2011 Mr Owen was sentenced to a term of 8-months immediate imprisonment. Under the regulations applicable to this sentence, Mr Owen would have been required to serve one half of the term in custody and the remainder in the community but subject to a conditional licence. It is possible that, under the Prisoner Early Release Scheme then (and now) in force, Mr Owen may have been released earlier than at the half-way point, for both offence and offender would likely have fitted the relevant criteria for that scheme. In any event the term will by now have been completed.

Case history

2. The defendant first appeared before the Caernarfon Magistrates Court on 24th November 2010. He gave no indication of his plea and the Magistrates adjourned the matter. On the 17th February 2011 the defendant was Committed for trial to the Mold Crown Court, to appear on the 18th March 2011.
3. The matter next came before the court for a Pleas and Case Management Hearing at Mold Crown Court on the 29th March 2011, when the defendant entered a not guilty plea. The matter was listed for trial to commence on the 5th December 2011.

4. Trial commenced on the 5th December 2011 and on the 7th December the jury convicted Mr Owen of the single charge of theft. Sentence was adjourned to the 23rd December 2011, upon which date Mr Owen received 8-months immediate imprisonment.
5. There has been no indication of any application to the Court of Appeal to challenge the conviction or sentence.

Prosecution case

6. The defendant Damian Peter OWEN was during the relevant period the Officer-in-Charge at the Glanadda sub-Post Office, Bangor, Wales, Branch Code 163 604. He was 28 years of age and his service with POL had commenced in 2008. The largely-absent sub-Postmaster of the office was Nicholas Pritchard, who had informally transferred the operation of the office to Mr Owen. This arrangement had not been authorised by POL and indeed was unknown to them. The Glanadda sub-Post Office is a small two-counter branch situated in a general convenience store, itself situated on a main road out of Bangor and within an area of terraced residential houses.
7. On Thursday 22nd July 2010 a member of the Field Support Team (the “Agent”) telephoned the Glanadda Post Office and spoke to the defendant Mr Owen. The agent informed Mr Owen that he would attend at the office on the following day at 2.00pm so as to migrate the system onto HOL.
8. On Friday the 23rd July 2011 the Agent attended the office as arranged, arriving at 2.00pm. A check was made of the cash holding; this caused the Agent a degree of concern as he noted there to be unusually large quantity of £1 coin and very few Sterling notes. Although this of itself did not raise any serious disquiet, the Agent also noticed that the snapshot indicated an excessive amount of valued stock. The migration was completed and the Agent left, saying nothing to Mr Owen. As the result of the migration Agent’s suspicions, an audit was conducted at the office on Sunday the 9th August 2010.
9. The audit of the 9th August revealed a deficit in the accounts of £24,633.99. This deficit was made up of: cash, £24,633.03; stock, £254.72; and postage, £80.24.

10. At the conclusion of the audit Mr Owen was asked to contact the SPMR, Mr Pritchard. Mr Owen responded that he had been trying to do so but that the telephone number was 'not recognised'. He also told the auditor that he did not know where Mr Pritchard lived – the number he had tried was his only means of contacting him.
11. The auditor asked Mr Owen if he knew of any reason why the branch accounts were short: Mr Owen replied that he did not, for as far as he was concerned it should have balanced; all of the cash was present on the preceding Wednesday and when the branch was migrated to HOL (23rd July).
12. The evidence of Andrew Keighley and Paul Whitaker deals with the increase in coin held at the office and may be usefully tabularised:

<u>Date</u>	<u>Coin on hand</u>
20/4/2009	£2,684
22/7/2010	£25,810
23/7/2010	£6,810
24/7/2010	£7,258
26/7/2010	£26,240
9/8/2010	£26,240

13. The evidence also informs us that on a number of dates no coin details were recorded, because of an apparent branch-communication failure. Further difficulties also arose by reason of a repeated failure to complete the cash declaration process correctly; and on the 1st November 2009 there was a total system failure. It is to be noted that only the returns of the 24th and 26th July and the 8th August 2010 represent post-migration dates. None of the branch-communication failures relate to this post-migration period.
14. This increase in coin holdings is said to be unusual; generally it would be expected that such large holdings would be remitted from the office promptly.

15. Similarly, the branch appeared to be holding unusually large quantities of unusable notes and £50 notes, the same amount being declared for long periods. Again such monies would usually be remitted out promptly.
16. A number of stock adjustments over the relevant period were noted to be unusual. There was "...a flurry of activity..." on the 23rd July 2010. Between 12.35pm and 1.31pm that day a number of stock adjust-positive transactions were performed. The effect of these transactions was to increase the value of stock within the branch and to produce a corresponding decrease in the branch cash on hand figure. The total increase in value (and consequent decrease in cash) amounted to £27,685.28. On Monday the 26th July, the day after migration had been successfully completed, further stock adjustment transactions were effected, the resulting in the re-inflation of the cash on hand figure and a diminution of the stock value, to approximately those values prior to the previous day's transactions. Thus the earlier adjustments were reversed.
17. On the 7th September 2010 Mr Owen was arrested and interviewed under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice. I summarise below the relevant passages of the interview transcripts adduced at the trial:
- The deficit was a surprise, particularly as [the migration] had been completed two weeks ago and nothing was amiss.
 - His arrangement with the SPMR Nicholas Pritchard had been going for about 2 years. He operated the small shop under the same arrangement. Nicholas Pritchard very rarely attended at the office. His last attendance was in June/July. When Nicholas Pritchard did attend at the office he would go behind the counter but would never serve.
 - He, Damian Owen, knew Nicholas Pritchard's HOL Log-in and password; on a few occasions he would serve customers using Nicholas Pritchard details. Thus any transactions under Nicholas Pritchard's details would not be his; they would be Mr Owen's.

- He first heard about the HOL migration on the day before – he was aware that the process involved his cash being checked. On the day everything was fine.
- He could not explain the rise in coin; it had been checked on migration and he had done nothing to increase the value to £27,000. When asked if the migration agent had found that amount of coin in his check Mr Owen responded “*I would have thought so.*” When he was told that it had not, he answered “*No*”. He was then asked what happened to the coin: Mr Owen responded “*I’m not sure.*”
- Mr Owen was asked about the increase in coin which had occurred prior to and following the migration process. He responded “*That should have stayed the way it was.*” Asked if there was any reason why the figures didn’t stay as they were, he answered “*Nothing we’ve done here.*”
- He said: “*Well, I think I would have noticed the odd £20,000 here and there.*” and repeated that he did not know why the coin had gone up; he wasn’t aware of any massive jump in coin; and would have known if someone had come in with £21,000 of coin.
- Mr Owen reiterated that he had not made any adjustment in coin to the value of £20,000 and did not know why the figure had gone up.
- He denied making the stock adjustments of the 23rd and 26th July.
- Throughout the interview Mr Owen denied taking any money from POL.

Admissions at trial

18. During the course of Mr Owen’s trial his representatives agreed on a number of facts and provided those agreed matters to the jury by way of s.10 Admissions. Relevant to this review are the following agreed facts (I adopt the numbering provided in the trial document):

2.throughout [the relevant period] the defendant had sole responsibility for the conduct of business at the....office.

3. During [the relevant period] the defendant was solely responsible for the transactions that took place at the post office and the data that was entered and recorded on the Horizon computer system.....
 6. Throughout the period the defendant entered information on the Horizon computer system using his own user identity and the user identity of Nicholas Pritchard.
 7. The defendant was responsible for the stock adjustments entered on the Horizon computer system on 23rd July 2010 and entered on the Horizon system on 26th July 2010.
19. No Horizon or HOL expert witness provided a statement in this case or was called to give evidence at the trial.

Defence case

20. As per interview – a denial of having stolen monies coupled with an inability to account for the coin figures or the stock adjustments. Also a vague and ill-defined suggestion that the problem may lie with HOL, although this is implicit rather than express.
21. In a Defence Statement dated the 29th March 2011 the defendant denied any false accounting or theft and made the following assertions (adopting that document's paragraph numbering):
3. The defendant does not know whether the accounting procedures adopted to produce [the migration and audit] information are accurate, nor whether there is a shortfall as alleged. Further, it is Mr Owen's understanding that the accounting systems operated by the Post Office are notorious for producing imbalance anomalies.
22. In his request for disclosure contained within his Defence Statement the defendant sought disclosure of, amongst other items, the following:
- i. SPMR Personnel file of Nicholas Pritchard;

- ii. Horizon audit printouts & Branch Trading Statements;
- iii. Migration checklist & cash/Cheque checklist;
- iv. PNC check for Nicholas Pritchard.

23. An “Amended Defence Statement” (undated in my papers) repeated the assertions noted in paragraph 19 above and said this (again adopting that document’s paragraph numbering):

- 7. To the extent that it is being suggested there were significant alterations input into the computer system on the 23rd July 2010 affecting cash and stock levels, the defendant does not necessarily accept that it was he who performed those operations and the Crown is put to strict proof thereof....
- 8. The only other person who might have been able to access the system was Nicholas Pritchard
- 9. The defendant now accepts that it might have been Nicholas Pritchard who input the data GRO It might have happened when the defendant was at lunch.
- 10. The defendant accepts inputting the correctional data on the 26th July 2010. He did so on telephone instruction from the Post Office.

Discussion

24. Initially Mr Owen’s stance, at interview at least, was that he could not explain the rises in coin and unusable notes and he had not conducted the stock adjustments of the 23rd and 26th July. This position developed, through his Defence Statement, into one of a general attack on both Horizon (pre-migration) and HOL, although he did not specify in what way Horizon/HOL had failed him. Then, in his “Amended Defence Statement” Mr Owen appeared to have accepted the reality of the Horizon/HOL stock adjustments on the 23rd and 26th July 2010, suggesting that Mr Pritchard was to blame for those of the 23rd July, whilst explaining those of the 26th July by saying that he had entered ‘correctional data’. Finally, the position moves once again at trial, when in the s.10 Admissions he accepted that:

- He was solely responsible for the transactions.....and the data.....entered and recorded on the Horizon system;
- He had used his own user identity and that of Nicholas Pritchard; and that
- he was responsible for the stock adjustments of the 23rd and 26th July.

25. This last change represented a complete reversal of his original position and was tantamount to an admission of the offence; it is in my view unsurprising that the jury convicted him of the offence, not least because (I expect) he would have been required under cross-examination to explain his changes of position.

26. My initial view of this case was that this was a typical “unexplained Horizon failings” case. However the more I go into the detail of the trial the more I am forced to the conclusion that this was not a Horizon case at all, at least not in the sense that we see it for the purpose of the review process. The case is really about whether Mr Owen had made entries into the system which were designed to deceive POL. I find support for this proposition by the fact that the vague and generalised attack on Horizon/HOL was not, it seems, pursued and that that issue was resolved by Mr Owen’s s.10 Admissions that he had indeed created the stock adjustments central to the prosecution case.

27. In these circumstances I cannot see that he will be assisted by the Second Sight Interim Report. That view however is reached with a degree of hindsight and we do not know why Mr Owen changed his position so completely. Looking at the case on a stage by stage basis, as would have been the case during the currency of the proceedings, one is forced to a different view. From what Mr Owen said in his interview, this was then in fact a typical “unexplained Horizon failings” case, and as such disclosure of the Second Sight Interim Report would then have been required had we then been possessed of it. Similarly, despite it’s vague and generalised nature, the assertion in the Defence Statement that “...the accounting systems operated by the Post Office are notorious for producing imbalance anomalies” would have required disclosure of the Interim Report. Thus by the time we get to trial, Mr Owen would have received the Second Sight

Interim Report and we do not know what impact that might have had on his defence or later change of heart.

28. Thus on the basis that, at two points in the proceedings our disclosure duties would have required service of the Second Sight Interim Report, I advise that we should now disclose the document. It matters not that, in the end Mr Owen resiled from his attack on Horizon/HOL and admitted authorship of the entries in question: he may not have done so (as was his right) had he been possessed of the Interim Report. Accordingly our duty requires disclosure now.
29. On the basis that no expert evidence relating to Horizon/HOL was served and no expert gave evidence, I advise that the Helen Rose Report should not be disclosed – the matters contained within that document could not have met the test for disclosure during these proceedings. Had POL relied upon expert evidence then of course the position would be different.

Safety of Conviction

30. 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.
31. 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 the defendant and disclose to him both the Second Sight Interim report.

32. 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.
33. 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. The evidence against the defendant was compelling;:
 - ii. His changes of heart throughout the proceedings are indicative of a desire deflect suspicion from himself and are plain evidence of lies;
 - iii. His s.10 Admissions to having conducted the stock adjustments of the 23rd and 26th July, and the timings of those adjustments, provide compelling evidence of his desire to hide what he must have known, *i.e.* that he was £25,000 out of hand.

Conclusion

34. 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.
35. 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.
36. Should the defendant be granted leave to appeal against his conviction, we should oppose the appeal.
37. 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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GRO

Simon Clarke
Barrister
Cartwright King Solicitors

19th November 2013