



**To:** Susan Crichton  
**Subject:** 2nd sight and QC ---

Susan

I was thinking about what we have been working on. Here are my thoughts.

I was the Prosecution lawyer in the case of *R v Misra* at Guildford Crown Court in 2009-2010. As far as I am aware, this is the only criminal trial where a jury has been required to consider in detail the integrity of the Horizon system. I can say generally about what lessons can be learned from the case, in the hope that this may be of some assistance to the business in response to the 2<sup>nd</sup> sight interim report and proposed appointment of a QC .

**1. The lessons to be learned from the *Misra* case**

There are a number of lessons that can be drawn from *Misra*. I am aware of the independent nature of the inquiry and of its expertise. I am seeking to merely set out some lessons and tentative suggestions that I have derived from completion of a difficult case.

Horizon is a complex computer system, about which even eminent experts can make mistakes. There was no reason to doubt Professor McLachlan's expertise and good faith but time and time again he had to be corrected by Mr Jenkins. Professor Mclachlan is not the only expert to have misunderstood Horizon. I have spoken to colleagues who prosecute these cases and they have come across other experts who have also fallen into error. It would be right for me to suggest how the independent inquiry should set about its work. The independence of the inquiry is obviously vital, but what I saw from the case was, that both sides in *Misra* were completely beholden to Gareth Jenkins and his deep knowledge of Horizon. The reliance that both sides had on his testimony was unique and only goes to show the intricacies and complexity of the Horizon system. The inquiry, will, I am sure, find its own way of immersing itself into the complexities of Horizon. Whether this involves the assistance of someone like Gareth Jenkins will be a matter entirely for the inquiry to decide but I cannot see any other alternative. What did Second Sight do to understand the system?

However, having said that, although the technical aspects of Horizon may be complex, its practical use by an SPM is not. Gareth Jenkins gave evidence about how the screen was designed to be easy to use and how the system gave simple instructions to the SPM as they went through a transaction. Prior to the trial prosecution visited the West Byfleet office with the Defence, where we were

shown by a member of staff how they operated the system. That operator was able to explain with some ease how they used the system. Watching operators use the system in practice and interviewing such operators may be highly instructive to the independent inquiry.

It is very easy for a dishonest SPM, as Mrs Misra was proved to be, to make vague accusations against Horizon where other lines of defence are closed. It is not difficult to attract sympathy for such false claims. An SPM is likely to be viewed as a hard-working person of good character. Most SPMs who steal do so because they are in financial difficulties, often stealing simply to prop up their failing shop business. In such circumstances there will be no evidence of luxurious living. A dishonest SPM can use these factors to create a false picture that he or she is the honest, hard-working victim of a complicated yet flawed computer system. Proving such a picture to be false is difficult: it has to be conceded that no computer system is perfect and that there have been problems with Horizon e.g. Bugs 62 and 14 problem. The only way to test whether a problem has arisen at a particular office is for a detailed analysis of the relevant transaction logs to be undertaken, as happened in the *Misra* case. A purely theoretical approach, as undertaken by Professor McLachlan, is worthless/pointless as it is only natural to list 'potential' flaws but it is the 'factual' that needs to be looked at.

I imagine that the independent inquiry will be examining some, perhaps all, of the cases on 2<sup>nd</sup> Sight's requested schedule. In none of those cases were the transaction logs ever examined?. This is time-consuming and expensive though it may be the only way to investigate the concerns raised by these former SPMs. Obtaining the transaction logs from their offices, for the relevant times and an analysis may be potentially be the only way to do it. If an individual case is being examined it would make sense for the complainant SPM to be invited to provide as much detail as possible about the problems they claim to have encountered. The SPM has a major advantage over any expert examining the data: the SPM had the stock in front of them not just the computer data. They should be able to give substantial clues as to what to look out for in the data. If an SPM is unable or unwilling to provide this information it may be because their allegations are false.

It is important in any case not only to examine the computer evidence but also to look at other evidence, in particular the behaviour of the SPM. Mrs Misra's failure to mention any computer problem until her case was first listed for trial severely undermined her claims. If there is a genuine, serious computer problem one would expect an SPM to contact the helpline about it. The jury had full details of Mrs Misra's communications with the helpline. Although she had regularly sought

help in relation to small problems she had singularly failed to report her serious, on-going losses. If human error was to blame it would have involved a long series of errors over a long period of time which somehow managed to create a neatly rising deficiency. The jury heard a lot of evidence about the training that Mrs Misra had received. They were entitled to reject the suggestion that she had been badly trained. After all, hiding a deficiency by false accounting in itself suggested considerable skill in the operation of Horizon. The evidence of other staff who have used the same equipment as a complainant SPM may be highly relevant, as the evidence of incoming sub postmaster was in the *Misra* case. If other operators at an office have not encountered a computer problem this may suggest that a complaint is untrue. One would think that if losses were being incurred through no fault of their own, they would want to investigate it or look for solutions, as it is in their best interest.

Hope this helps.

Jarnail Singh | Criminal Lawyer

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