

**REGINA**

**-v-**

**SEEMA MISRA**

**RESPONSE TO DEFENCE ABUSE SKELETON**

1. The Crown opposes the application. The Crown has been presented with an avalanche of disclosure requests in this case. Responding to those requests has been a considerable task but the Crown has responded.
2. Every transaction in a sub-post office goes through the Horizon system. The system is designed to be easy to use. Each terminal has large, coloured buttons and at every stage of a transaction simple instructions appear on the screen to guide the operator through the process. Seema Misra was an experienced sub-postmistress. She had run her own office for just over 2½ years; she simply could not have done this without being proficient in Horizon. She would have been responsible for training her staff in the operation of the system. If, as the Defence allege, there was a continuing problem with the Horizon system at West Byfleet, Mrs Misra should have been keenly aware of it at the time it was occurring. As she was personally liable for any deficiency, she would have a considerable motive to get to the bottom of any problem she encountered. She would have been helped by the various printouts that the system can produce to check cash and stock. There was also the Horizon System Helpdesk, a helpline for her to contact which would allow her to speak to staff with varied expertise. Vipinprakash Varsani (statement bundle p.17) took over from Mrs Misra when she was suspended. He states that since he took over he has had no problem with the Horizon equipment he inherited and has no reason to doubt its reliability or accuracy.
3. The Crown sets out these basic details from the case because they should have provided a useful starting point from which to make focused disclosure requests, which were informed by the Defendant's instructions. Even if Mrs Misra was suffering a technical difficulty she couldn't solve, she would presumably still be in a strong position now to tell her lawyers and expert what the problem was not, because she had had an incentive to try everything she

could to solve the problem. The Defence in cases of this kind should always have a considerable advantage: their client is an expert in Horizon and is the person who was operating the system.

4. The root cause of the disclosure problems in this case has been a failure by the Defence to make focused requests. This is not meant as a derogatory criticism. The Defence can only act on their instructions. But the case has been transformed, from a straightforward, general deficiency trial into a boundless enquiry into the whole Horizon system. The Crown has made strenuous efforts to comply with the vast scope of disclosure requests and we respectfully submit we have fulfilled our duty. Nevertheless, the task has been close to overwhelming. As a result the Crown has failed to comply with the time limits set by the Court and has failed to respond to the Defence as expeditiously as it would have wished. The Crown has, however, responded to all disclosure requests. The suggestion in paragraph 11 of the Defence skeleton that the Crown has not responded to the request dated 3/2/10 is incorrect.

5. As an indication of the kind of disclosure requests made in this case I attach to this skeleton the Defence's Further Request for Disclosure served on 30/11/09. The requests at paragraphs 2, 8, and 19 are submitted to be unreasonable.

6. The Crown accepts that its expert, Gareth Jenkins, was instructed at a regrettably late stage. His instruction was a belated recognition that the only way fully to comply with our disclosure obligations was to instruct an expert at Fujitsu. Mr Jenkins has held detailed discussions with Professor McLachlan and explained why some of the Professor's theories don't work. The first statement produced by Mr Jenkins was very limited. A fuller statement will be served this week. We do not anticipate that it will contain material that Mr Jenkins has not already discussed with Professor McLachlan.

7. One of the main sticking points in the disclosure process has been the cost of obtaining Horizon data. Transaction logs can be obtained from Fujitsu that show the details of every single transaction at a post office. The Defence's request has been for logs from 6 months prior to the Defendant's tenure to the present day. This request is far too wide and the cost of obtaining that data

would frankly be astronomical (see below at para 8 for the cost of providing limited data). The Crown has explained on numerous occasions how expensive it is to obtain this material. The expense simply results from Royal Mail's contractual obligations to Fujitsu. We have asked the Defence repeatedly to consider a narrow time span for their request or a narrow field of types of transactions. The reason for this suggestion was that the Defendant's false inflations increased consistently over a long period of time. They indicate some kind of continuing problem, rather than a few one-off events. If there really was an innocent reason for the Defendant's false figures it could be searched for rather more easily in a short, representative cross-section of data than in a mountain of information covering more than 5 years. The Crown has made it clear that if significant problems/errors were found in an analysis of a narrow span of data it would review its case on count 1.

8. The Defence has made no proposal as to an appropriate span of data, even though it has the potential advantage of the Defendant's insider knowledge. This failure by the Defence has been rather frustrating but it may have been in part because the Defence put its request on hold while it asked for justification of the cost of obtaining this data. The Crown has chosen therefore, at a cost of over £20,000, to obtain logs for the period December 2006-December 2007. The logs consist of 431,490 separate transactions. The chosen time period covers the full extent of the Defendant's admitted false accounting. It also post-dates the time when the Defendant claims to have put a stop to thefts by employees. It should therefore be more than sufficient material for Professor McLachlan to study to see if there is any support for his theories. With an expert eye the material is not difficult to analyse. In a morning's work the Crown's expert, Gareth Jenkins, was able to analyse all failed credit card transactions and, to his mind at least, refute Professor McLachlan's theories on that score.

9. The logs should be in the possession of Professor McLachlan by Monday 8 March. Mr Jenkins will continue to provide Professor McLachlan with all the assistance he needs to get to grips with the material. By the time of the abuse hearing it is hoped that Professor McLachlan will have had a chance to review the question of whether he will be ready by the trial date.

10. Professor McLachlan has helpfully put in his 5<sup>th</sup> interim report a schedule of the work he wishes to carry out. Mr Jenkins has added his comments on Professor McLachlan's theories. They are underlined and in a different colour. A copy of that amended document is attached to this skeleton. Mr Jenkins has discussed with Professor McLachlan the comments he makes in the document. It is submitted that some of the Professor's ideas of the work he would like to carry out would be unlikely to elicit admissible evidence. Watching the training of a Misra clone would hardly be a reliable indicator of the standard of Mrs Misra's work in her 2 ½ years as sub-postmistress. Filming another sub-postmistress apparently having identifiable problems at another branch would have no bearing on what Mrs Misra did, unless she claimed to have suffered the same problems. Mrs Misra's second defence statement suggests she has no idea what her problems may have been.

11. The Crown has taken its disclosure obligations in this case very seriously. The s.8 disclosure application dated 01/10/09 was served at the Crown's invitation. Prosecution Counsel then took the trouble to speak to the Defence about the disclosure test he was going to follow. The Defence agreed with his test. Prosecution Counsel then went on to review approximately 3000 pages of papers in relation to sub-post offices where problems with Horizon had been alleged. Those papers were not immediately available but had to be retrieved in several tranches from distant storage. Prosecution Counsel has additionally reviewed the papers in two ongoing criminal cases. The Defence has received limited disclosure from this exercise simply because very little material fell to be disclosed under the agreed test.

### **The Law**

12. The Defence skeleton (at para 3ii) refers to the case of **Eden (55 Cr.App.R. 193)**. It is unclear what relevance this has to the abuse argument. It is respectfully submitted that Mrs Misra's case is precisely the sort of case, envisaged in **Eden** at p.198-9, where there is good reason for having both theft and false accounting on the indictment. The two sets of offences do not stand or fall together. Mrs Misra claims that she committed false accounting for a temporary gain, namely hiding the debt she owed to the Post Office. The

Crown's case is that the false accounting was how she filled the hole in her accounts that had been caused by her stealing.

13. The Crown submits that the issue for the abuse hearing is whether the Defence can show that the Defendant will not receive a fair trial. This is not a case where the Crown is guilty of serious fault to the extent that the case should be stayed, irrespective of whether a fair trial is possible. There has been no misuse or manipulation of the Court's process. The disclosure process has been fraught with difficulty, but that was perhaps inevitable where that process had unparalleled demands. The picture in the Defence skeleton of the Defence making all the running in the case while the Crown did nothing is not a fair one.

14. The Crown has acted properly throughout. The Crown could have objected to Mrs Misra's application to adjourn on the day of her trial. If that had happened the trial may well have proceeded on that day. The Crown thought it right that there should be a thorough examination of the Defendant's concerns about Horizon, even though those concerns had been raised at a remarkably late stage.

15. The Crown still hopes that the Defence can be ready for trial. It is anticipated that the involvement of Mr Jenkins and the service of the logs will dramatically assist the Defence's preparation. It would clearly be extremely unfortunate for the case to be adjourned once more. However, as the Defence skeleton correctly points out, a stay is an exceptional remedy of last resort. If an adjournment would allow the Defendant to have a fair trial then that would be an appropriate remedy.

**WARWICK TATFORD**

**7 March 2010**