

Keith K Baines

22/03/2004 10:23

To: Rory Silkin/[redacted] GRO  
cc: Tam Curran/[redacted] GRO, Nicholas  
Samuel/[redacted] GRO  
Subject: Cleveleys MSPO Mrs J. Wolstenholme

Rory,

I am concerned that by settling this case we might set a precedent which could be used by any subpostmaster who had a cash shortage to account for - i.e. "it's the computer's fault". Are there any steps we can take with Fujitsu to mitigate this? For example, should we ask them to investigate the shortcomings in their processes highlighted in the expert's report and implement any corrective actions that are necessary? It also seems to me to be likely that if the expert's report is correct, then Fujitsu are failing to carry out some of their obligations relating to data integrity (for example, 6.6.1.4 in Schedule 17 - see extract attached below). Should we raise this with Fujitsu in the context of this case?

Regards,  
Keith

### Extract from Schedule 17:

#### 6.6 Security

##### 6.6.1 Security of data and audit trail for OPS

6.6.1.1 All data captured at a Branch either as part of a Transaction performed at a Counter Position or as an administration function shall form part of a unique Transaction which shall be given a unique reference number by Riposte and details stored in the message store. The format of this message store entry shall vary according to the Transaction type but will typically contain:

- (a) Post Office ID;
- (b) Counter Position ID;
- (c) unique Transaction ID;
- (d) date;
- (e) time;
- (f) User ID;
- (g) Application; and
- (h) Transaction details.

6.6.1.2 Each Counter Position PC shall contain a journal and all journal entries shall be automatically replicated to all other members of the work group. A work group shall include all the Counter Position PCs in the Branch and one of the correspondence servers, at which TMS is provided. This correspondence server forms part of a "cluster" of correspondence servers of which two are located on one Data Centre site and the remaining two located on the other Data Centre site. All Transactions associated with one correspondence server are automatically replicated to the other site. Within each site all Transactions are reliably mirrored within a multiple disk array which has no single point of failure.

6.6.1.3 Once data are stored in the message store they shall never be altered. New Transactions shall always be appended to the message store. Retrieval of data using a particular key field shall retrieve all entries containing that field.

6.6.1.4 The security of data held within OPS shall not be compromised by any incident nor when OPS is re-established following any Incident.

6.6.1.5 Fujitsu Services shall provide synchronisation facilities which shall automatically check the status of the journal for a node when it is re-established following failure. Should the journal be

out of step (e.g. through failure of the Counter Position PC) Fujitsu Services shall automatically synchronise the journal and any data files to the same state as all other journals in that work group. Synchronisation may occur from another Counter Position PC (in a multi-Counter Position Branch) or from one of the correspondence servers or the second hard disc referred to in paragraph 8.2.4.2 (in a single Counter Position Branch).

6.6.1.6 The operating system supporting the OPS shall provide assurance of access control and data integrity functions.

----- Forwarded by Keith K Baines/e/POSTOFFICE on 22/03/2004 09:50 -----

**Jim Cruise**

19/03/2004 15:21

To: Keith K Baines/ [GRO]

cc:

Subject: Cleveleys MSPO Mrs J. Wolstenholme

To keep you up to date with developments in this case please see, in particular, the last two paras. of the email below. I am waiting for instructions to try to settle the case, failing which the expert will be asked if he wants to visit Fujitsu and see the raw data in the case.

----- Forwarded by Jim Cruise/e/POSTOFFICE on 19/03/2004 15:18 -----

**Jim Cruise**

17/03/2004 16:15

To: Mandy Talbot/ [GRO]

cc:

Subject: Cleveleys MSPO Mrs J. Wolstenholme

This case started back on 17/1/01 with an email query from the then Personnel Dept. in Leeds about the above office when the spm's contract was suspended on 30/11/00 as there were a large number of error notices and losses and gains. At that time the losses were £14K and the spm was refusing to make them good blaming the losses on the Horizon system which had been introduced in February 2000 at her office.

She was given 3 months notice and her remuneration for the 3 months came to about £19,300 which was set against losses. An attempt was made to instal a temporary spm at the premises but negotiations eventually broke down but Mrs W. had by then made a claim for rent for POL equipment remaining at the premises after 30/11/00. The claim was not accepted as it was felt to be in both side's interests for the equipment to stay while there was a chance of a temporary spm being installed.

On 7/2/01 the spm's partner, Roger Harrison, asked if ICL could look at the computer system as he believed that there were problems with it. On 23/2/01, R.H refused to allow the safes and Horizon equipment to be removed from the PO which POL wished to do as the claim for rent had been made. The refusal was because of the dispute with POL. Mrs W. asked for proof that the losses were her fault and caused by computer failure. She also asked for copies of all error notices but Chesterfield said that these were not available.

On 27/2/01 I advised Elaine Tagg, the RLM, that because of the allegation of computer failure the printouts should be obtained from the National Audit Team showing a full audit trail at this PO. On 28/2/01 Elaine Tagg told me that she had the call logs for the office.

On 12/3/01 I wrote to Mrs W. with a letter before action over the unlawfully detained goods at the PO. On 19/4/01 proceedings were issued for delivery up of POL's goods. By this time Mrs W. had made an Employment Tribunal application for unfair dismissal and reinstatement. A Defence and Counterclaim were received and the case was passed to Weightmans on 13/6/01 as the case had been transferred to Blackpool County Court.

The Def. & cc has been drafted by Counsel but the defence is based upon Mrs W. being an employee. The cc is that the contract was wrongly terminated ; that the computer system was unfit for its purpose and throws in the Human Rights Act and the Commercial Agents regs! It claims £82.5K for loss of "ingoin"; loss of earnings from Nov.2000 onwards @ £5,300 per month etc. A reply and defence to the cc has been entered. The P's of Claim were later amended to claim losses of £25,034.04 as well. Disclosure has been made and statements exchanged.

In August 2002 an M.P.'s letter was received and replied to by David Mills. Mrs W. took her employment case to the Appeal Tribunal but was not successful there in December 2002. The civil proceedings were stayed while the EAT matter was finalised.

On 23/1/03 Mrs W.'s solicitors asked for the error notices from Feb.2000 to Nov 2000 together with the computer logs for June 2000 to Nov. 2000. There was also a query about whether the losses had been set against the remuneration due to her.

A CMC was then held in Feb 2003 at which an order was made to instruct a single joint expert in the field of computer technology on the issue of liability and causation with the fees to be shared by both parties. Mrs W. was now a litigant in person and has been so since then. Mrs W. at that time had call logs from Feb. to June 2000 and was claiming that "Horizon" were refusing to provide copies of logs from June to Nov. 2000. She also claimed to be on income support with no assets.

It was confirmed at this point that there were no copies of error notices or entries in the suspense a/c for this office. The agents expressed their concern at the lack of documentation for the losses. I advised FSA that the case should settle with the remuneration due being set against the losses and the balance of just over £5k being written off with Mrs W. to surrender the equipment. She declined to settle saying the losses were not accepted as her fault but let POL remove all the equipment other than the computer equipment.

POL then agreed to offer her up to £5K to settle. This sum was paid into court in July 2003 but has not been accepted. Since then the report of the computer expert ,Best Practice plc, based on the available call logs has been received and as you are aware is unfavourable and unflattering to Fujitsu if not actually hostile. In the light of the report, which cannot really be challenged, I do not think that POL will be able to prove, even on the balance of probabilities that the losses were the fault of the spm and our agents are still concerned about the lack of evidence for the losses. They want to obtain Counsel's opinion on liability and quantum and the question of mediation has now been raised at the recent CMC.

At court Mrs W. said that she would settle for two and a half times her annual remuneration , a total figure in the region of £187,500, as this is the figure being paid to spm's when offices are closed. POL clearly cannot settle on the basis of such a sum but the question of further questions to the expert has been raised and I can only see further costs being run up in this case with very little chance of POL getting its money even if it proves its case. I intend therefore to advise that POL should pay Mrs W. or pay into court the figure of 3 months remuneration plus interest on the basis that although it is unlikely that POL can now prove the losses were her fault alone, as per the contract for services, POL can give 3 months notice without giving reasons and this is all she will be able to obtain by way of damages in any event if she takes the matter to trial. The payment-in should be of another £20,000 to take account of interest since November 2000. If it is not accepted the case will have to be fought to resist the counterclaim which cannot be accepted but costs should be cut by accepting the expert's report and not seeking to challenge it further and effectively not pursuing the losses and paying her the full remuneration for the 3 month notice period on the basis that this is all she will obtain by way of damages after a full trial.

