

REGINA

-v-

SEEMA MISRA

ADVICE

1. I am asked to advise as to the responses to be made to the two requests for disclosure by the Defence in this case.

2. We have been put on notice only in very general terms that the Defence are challenging the reliability of Horizon. No Defence Statement has yet been served that even mentions this issue. I suggest that our response to the disclosure requests should raise this failing. I suggest something along the following lines: "We will respond to all reasonable requests that seek material that may undermine the Prosecution case or support your client's defence. We understand in general terms that you are seeking to challenge the integrity of the Horizon system. We feel obliged to point out, however, that you have not as yet served a Defence Statement which raises any issue whatsoever with the Horizon system. If any apparent errors were occurring in the indictment period your client should have a good knowledge of what they might be, simply because she would have regularly been checking the stock against the Horizon records. We take the view that a detailed Defence Statement is required in this case which fully particularises any problems with Horizon upon which your client would seek to rely at trial. The Defence Statement should obviously make clear what the issues in the case are. At the moment we do not know whether your client still claims that she was hiding thefts by members of staff and to what extent those alleged thefts

contributed to the deficiency at the office. We are handicapped in fulfilling our disclosure obligations by the absence of an adequate Defence Statement. The credibility of your client may also be damaged at trial if no adequate Defence Statement is served.”

3. I will now turn to the specific disclosure requests.

Section 8 disclosure application

4. I have now viewed the paperwork held by the Civil and Criminal departments in relation to all the “case studies” set out in the Computer Weekly article which is attached to the s.8 application. In deciding whether any material should be disclosed I have kept the following test in mind: is there material that is capable of casting an objective doubt on the reliability of Horizon? I discussed the suitability of this test with the Defendant’s legal representatives when we all attended the West Byfleet office on 6/11/09. They agreed with the test. The mere assertion by a sub-postmaster that a loss should be attributed to computer error is not capable of amounting to the sort of objective material that ought to be disclosed.

5. The only material that should be disclosed from the files that I have viewed is the Judgment in the Castleton case. I attach a copy of the final Judgment to this Advice. All the other material simply contains unsubstantiated claims by sub-postmasters. When those claims have been investigated no supporting evidence has been found.

6. However, before we respond to the s.8 application I would wish some further enquiries to be made from Fujitsu. Paragraph 23 of the Castleton Judgment refers to the evidence of Anne Chambers, a system specialist employed by Fujitsu. When she was cross-examined

she appears to have had full knowledge of an error in Horizon that had occurred at Callender Square in Falkirk. This appears to relate to "case study 6" in the Computer Weekly article. I have seen some civil paperwork in relation to Alan Brown, but not concerning a Horizon error. I don't know if Anne Chambers still works for Fujitsu but it should be relatively straightforward for Fujitsu to provide full information about what appears to have been a well-known problem at Callender Square.

7. I also think that our disclosure duty requires us to ask Fujitsu whether they are aware of any other Horizon error that has been found at any sub-post office. I anticipate that there will be none, but it is important that the check is made.

8. I assume that these enquiries can be completed quickly. Once I have seen the results I can draft a response to the s.8 application.

Further Request for Disclosure

9. I hope it will be possible for my instructing solicitor to respond to this document. I am happy to draft a response but there are a number of matters that are outside my knowledge at present. A number of the requests in this document are unreasonable. I will go through the requests in the order and under the headings they appear. John Longman has also prepared a document in which he answers the requests to the extent he can. I attach that document to this Advice. I suggest the format adopted by Mr Longman, of setting out the Defence request and then its answer, is adopted when the response to this document is sent, not least because the numbering used in the Defence document is a little haphazard.

Contract

10. John Longman has obtained a full copy of the Defendant's contract which should be served on the Defence. He is able to answer enquiry 2a but not b. I do not understand how any of the information sought under enquiry 2 is relevant to the Misra case. The Defence should be told that this enquiry will not be answered unless they can explain its relevance.

Training

11. Requests 1 and 2 in this section cannot be met because we are not in possession of hard copies of the manual and the updates that were sent to West Byfleet. The Defence should be told that the only available copies of exactly what was sent to West Byfleet are still at the office and they will be allowed to inspect them there. The CD referred to in Mr Longman's answer to 2 should not be served because it will not reflect what Mrs Misra would have relied upon. We are in possession of the records requested in enquiry 3. Copies of those records should be served. Mr Longman's answers to 4 and 5a should also be communicated to the Defence. I understand that Mr Longman will inspect the file referred to in his answer to 5b. I anticipate that that file entry will need to be disclosed and a copy should be sent to the Defence.

12. Mr Longman has told me that he will obtain a further statement from Andy Dunks which will answer enquiry 6 fully. Enquiry 7 can be answered by the first 3 lines of Mr Longman's response.

Investigation

13. The detail requested in enquiry 8 is irrelevant. A general answer along the following lines can perhaps be given: "We do not understand what you mean by the first sentence of this paragraph. We certainly do not accept that your client was misled at any stage of the investigation. Each year there are a number of successful prosecutions of sub-postmasters for theft following deficiencies found in audits. Some of those successful prosecutions have involved full confessions. We do not understand how the detail you seek in this enquiry can possibly undermine the prosecution case or support your client's defence".

14. The Defence enquiries in 9 and 10 can be answered in the terms set out set out by Mr Longman, save that the inflammatory words "Not true" at the beginning of the answer to 9 should be replaced by something more diplomatic such as "There appears to have been some confusion here."

Horizon System

15. Request 11. The Defence have previously requested "service logs" for an enormous period: from 6 months prior to the Defendant's taking up the position of sub-postmaster to the present day. As I understand it, if Fujitsu are asked to supply all the Horizon data for this period the cost will be in the region of £15,000. On the other hand if much more specific requests are made, eg. for credit card transactions for a relatively short period, the cost may be much more limited. I understand that the reason for the distinction may be based on the contract with Fujitsu as much as the amount of work involved and that there may be a contractual limit to the amount of data requests that

can be made of Fujitsu each year. If the Defence request to justify the cost of their blanket enquiry can be met without breaching any contractual sensitivities then a brief justification would be appropriate. The Defence should be asked to provide more focussed requests. Something along the following lines may be fitting: "We can understand why you would want to see specific areas of the Horizon data. Your expert will want to check his theories against the relevant data. Your client will also presumably be able to direct you to specific types of transactions where she feels errors may have occurred. We do not understand how your expert will be assisted by being presented with a mountain of data covering 5 years."

16. Request 12 appears reasonable. I hope that Fujitsu can provide details of the rigorous testing of Horizon without, of course, breaching any commercial sensitivities.

17. I have spoken to Issy Hogg about request 13 and have suggested to her that she already has all the material which proves the deficiency. She has said that she will reconsider this request.

18. Request 14 appears reasonable. I imagine it is relatively easy to check whether there were any hardware changes during the indictment period. Mr Varsani has already confirmed in his witness statement that there have been no changes in his time. If there have been any hardware changes an explanation should be provided as to why this should not affect the reliability of the equipment, along the lines set out by Mr Longman in his document.

19. Request 15. I have been chasing a copy of Eleanor Nixon's statement from the Defence and finally received a copy on 4/1/10, although the Defence claim that a copy was faxed to my instructing

solicitor on 30/11/09. I have forwarded a copy to Mr Longman and attach a copy to this Advice. I will ask Mandy Talbot, who has been extremely helpful in retrieving civil files and explaining them to me, to try to obtain any civil papers in relation to Mrs Nixon. The witness statement does not reveal a problem with Horizon's reliability but rather a mistake that she claims can easily be made because of the layout of the screen. It may be that the alleged layout problem is something which Fujitsu is aware of and has been rectified. A copy of Mrs Nixon's statement should be forwarded to Fujitsu for their comments. It should also be straightforward to ascertain whether or not Mrs Misra was falling into the trap identified by Mrs Nixon. The error described would presumably create a cash shortage matched by an equal surplus elsewhere. There would also presumably be a flurry of error notices if she was making substantial mistakes. Overall, I anticipate that we should be able to serve witness statements relatively quickly which can prove that the Nixon theory is inapplicable to Misra's situation.

20. Request 16 appears to be a request for temporary immunity from prosecution for the mystery sub-post mistress. Paragraph 2.1.3.8 of the Defence expert's 2nd interim report seems to suggest that this lady routinely commits offences of false accounting. The Defence should be told that we are unable to make any promise along the lines they suggest, as it would be a clear breach of our duty to investigate criminal offences.

21. Request 17. I don't know if there are any imminent changes expected at West Byfleet before our trial. If there are, it is obviously important that the current equipment is safely preserved so that the Defence retain the ability to examine it.

22. Request 18a. I have spoken to Prosecution Counsel instructed in the case of MacDonald, who is John Gibson at India Buildings in Liverpool. No interim report has yet been served in that case which is now not due to be tried until the middle of 2010. I am satisfied that there is no material so far in that case that is capable of raising an objective doubt as to the reliability of Horizon and so, as yet, there is nothing that should be disclosed. The Defence should be informed that no interim report has been served in that case, that nothing yet falls to be disclosed but that we will keep disclosure in relation to that case under review.

23. Request 18b. By a happy coincidence the Brief in the case of Hosi is in Chambers. Sarah Selby is instructed and Juliet McFarlane is the Principal Lawyer. I have read through the Brief. A Defence preliminary expert report has been served. That report, although rather unimpressive in many respects, is material that ought to be disclosed in our case. The report would not be comprehensible without sight of the other case papers. I suggest that, in addition to the preliminary report, the witness statements, exhibits, defence statement and summary of facts be copied and served. It would be sensible to contact the solicitors for Hosi, EPD Solicitors, to ask whether they consent to their report being disclosed. I am sure they will consent because in due course they will no doubt request disclosure from our case for their trial.

24. Request 19 is unreasonable for the same reason as I have set out for request 8. The Defence should be reminded that our duty of disclosure only extends to material that may undermine our case or that may support their client's defence.

Other Matters

25. John Longman has sensibly suggested that the Defence expert might want to meet with one or more representatives from Fujitsu to discuss technical issues and to reach as much agreement as possible. This is an obvious way of avoiding much wasted time and such an invitation should be given to the Defence.

26. Gareth Jenkins at Fujitsu has provided Mr Longman with a number of comments about the Defence 2nd interim report which confirmed my suspicion that the theory that Horizon cannot deal with refused credit card transactions is simply wrong. He has suggested in his comments that there are also a number of areas where POL could provide assistance. It seems that it would be relatively easy to disprove the theories of the 2nd report by witness statements from Mr Jenkins and from a suitable witness at POL. Those statements should be sought now. Although the Defence are likely to come up with other theories, it will hopefully save time and expense on both sides if we try to rebut false theories as and when they arise.

GRO

WARWICK TATFORD

5/1/10