
From: Rodric Williams [GRO]
Sent: Wed 20/07/2016 2:59:09 PM (UTC)
To: Parsons, Andrew [GRO]; Mark Underwood1 [GRO]; Patrick Bourke [GRO]
Subject: FW: Bullets on M012

I trawling through old emails looking for the (as yet unfound) needle in the haystack, I came across this wee beauty on Misra, which cuts across a number of themes also addressed in the draft LoR....

From: Jarnail Singh
Sent: 11 June 2014 16:46
To: Sophie Bialaszewski
Cc: Lena Hameed; David Oliver1; Rodric Williams; Melanie Corfield; Jessica Madron; Chris Aujard
Subject: RE: Bullets on M012

Sophie

Mrs Misra continues to protest her innocence via the media. The summary below shows there was ample evidence to justify a conviction.

1. The *Misra* case at Guildford Crown Court in 2009-2010 as far as I am aware, is the only criminal trial where a jury has been required to consider in detail the integrity of the Horizon system.
2. **Seema Misra was subpostmistress (“SPM”) at West Byfleet. She was accused of stealing £74,609.84, between 2005 and 2008. On 21/10/10, after a 7 day trial, she was found guilty by the jury of the theft.**
3. **Mrs Misra claimed that, although she was guilty of false accounting, she had not stolen the money whose loss she had concealed. She suggested that one possible reason why the money appeared to be missing might be computer error. The jury heard from expert witnesses for the Crown and the Defence. Their evidence was sufficiently detailed as to have lasted two full days. The jury’s verdict showed that it was sure that computer error played no role in the case. There has been no appeal against conviction.**
4. The Defence made very wide-ranging requests for disclosure and Prosecution was asked to review material relating to a number of other offices where SPMs had made complaints about Horizon. That disclosure process was fraught with difficulties, mainly because the disclosure requests were unfocussed and often irrelevant. If we had complied with every disclosure request the investigation department would probably have been paralysed for 6 months, the investigators being unable to deal with any other work.
5. I am aware that Mrs Misra continues to protest her innocence via the media and that she is one of a number of vocal critics of Horizon. It is perhaps worthwhile setting out the facts of her case and what happened at trial because some of the critical reports of the case have not been accurate.

The facts of *Misra*

6. An audit took place at West Byfleet on 14/1/08. A deficiency of £74,609.84 was found. Mrs Misra, both in her conversations with the auditors and in her interview under caution, said that the deficiency was because of thefts by previous employees. She made no complaint at that stage about the Horizon system. She had not reported the alleged thefts to the police. Instead she had decided to hide the hole in the accounts by false accounting. When this initial explanation was investigated it was found not to match the evidence. The inflations Mrs Misra put into the system to hide the deficiency continued to grow after the “thieves” had ceased to work at West Byfleet. If “thieves had been responsible for the hole in the accounts, the hole would not have continued to grow after their departure.
7. This difficulty was pointed out to Mrs Misra’s Solicitors when the case was listed for a plea and case management hearing on 20/3/09. At that hearing Mrs Misra pleaded guilty to 7 counts of false accounting and not guilty to theft. A defence statement was submitted which continued to lay blame on the old employees. There was still no criticism of the Horizon system.
8. When Mrs Misra’s case was listed for trial on 2/6/09 she brought to Court material from the internet detailing a number of complaints about the Horizon system made by former SPMs. POL agreed to an adjournment of the trial to allow the Defence to pursue this new line of enquiry, even though it was likely that Mrs Misra was jumping on a bandwagon now that she had finally realised her original defence didn’t work.
9. Mrs Misra changed solicitors and there then followed a difficult period when POL was subjected to an avalanche of disclosure requests. We were also served with a series of so-called “interim reports” by a newly instructed defence expert called Professor Charles McLachlan. These reports raised theoretical possibilities of things that might go wrong with Horizon. The reports contained no evidence for the theories and no explanation as to why any of these theories might be relevant to the West Byfleet office. Our efforts to control these disclosure requests fell on deaf ears. We repeatedly made the point that the case was not about whether the Horizon system was perfect. No computer system can be perfect and errors can arise on any system. The issue was whether anything had gone wrong at West Byfleet. The person who would know that was Mrs Misra. At the very least she should be able to identify what sort of problems she had encountered and where on the accounts the deficiencies were emerging. She would know this because she would have physically checked the stock against the computer records.
10. It emerged in the trial that in spite of our requests for a focussed approach defence expert Professor McLachlan had never sought any information from Mrs Misra. His theories were simply his own. Mrs Misra had given him no guidance whatsoever as to what might have been going wrong at West Byfleet.
11. POL instructed their own expert, Mr Jenkins from Fujitsu. This was a turning-point in the case. Professor McLachlan fairly conceded that Mr Jenkins had given him very great assistance in understanding Horizon. Mr Jenkins was able to explain to Professor McLachlan how many of his theories were not valid and based on a misunderstanding of Horizon. Mr Jenkins advised that the only

way to assess any problems at West Byfleet was to obtain the transaction logs and to examine them for potential problems. Obtaining the logs was expensive and their analysis was time-consuming. However, after both experts had completed this analysis, neither could find evidence of any computer error whatsoever that could have contributed to the deficiency.

12. In his evidence to the jury Professor McLachlan conceded that all of the theoretical problems he had raised were now irrelevant. He abandoned most of his theories after being assisted to a better understanding by Mr Jenkins. Other theories he had checked against the transaction logs and had found to be baseless. In a nutshell his final conclusion was this: he hadn't found any problem but there still might have been a problem that he and Jenkins might have missed. The jury clearly rejected this as wishful thinking, after considering all of the evidence in the case.
13. Mrs Misra, in her evidence, was unable to give any further information as to where in her accounts the computer problem was happening. She should have had the advantage over the experts because she had physically checked the stock against the Horizon records. She was on the scene to witness the symptoms of any computer problem while the experts could only trawl through the data long after the event. Any sensible SPM would have hunted high and low to ascertain where in the accounts the losses were occurring. An SPM should be able to find the location of the problem even if they could not solve it. Mrs Misra had not made any such rigorous checks. She had simply accepted each loss and rather than declare the deficiency in the monthly balance, as she was required to do, she had hidden it by false accounting.
14. In addition to alleging computer error Mrs Misra continued to suggest that the loss was due, at least in part, to thefts by previous employees, even though she never reported those thefts. She also suggested that, if the deficiency was not caused by computer error, it might have been caused by simple mistakes on her part. She criticised the training she had received. At one stage she suggested her command of English might have been to blame. This was an odd suggestion because she holds a university degree in English Literature.
15. 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 jury heard evidence from Vipinprakash Varsani, who took over the running of the West Byfleet office after Mrs Misra was suspended. He said that, in his experience, it was always possible to discover and correct mistakes by checking the Horizon records against the stock.
16. Mr Varsani also gave evidence about the Horizon equipment that he had inherited at West Byfleet. He had experienced no problems. If there was a computer glitch it had somehow disappeared by the time Mr Varsani took over. This was an important piece of evidence to add to the experts who had both

discovered no fault.

- 17. It can be seen from this summary that there was ample evidence to justify a conviction. The jury was entitled to conclude that there was only one sensible reason for Mrs Misra to cook the books: to hide her own stealing. An honest SPM would have reported the loss immediately. This is what they are required to do. It is also the obvious step out of self-interest. At the very least it would nip any problem in the bud and limit the amount of money the SPM might have to repay. Also, if a genuine problem was found with the computer system, there would be no question of repayment. Mrs Misra claimed that she had not wanted to lose the post office and that was why she had been so secretive. This ignored the obvious fact that she had allowed the loss to grow to such a catastrophic amount that it would have been better to give the business away. The jury was entitled to reject her evidence as absurd and to conclude that her belated attack on Horizon was nothing but a desperate distraction tactic.**
18. The two criminal files I looked at are of some significance. Jo Hamilton and Noel Thomas have been prominent critics of Horizon in the media. Their cases were similar to Mrs Misra. Both were SPMs who chose to hide deficiencies by false accounting over a long period of time, rather than declare their losses. The deficiencies were only discovered when audits took place at their offices. Both pleaded guilty to false accounting. Those pleas were accepted, not because there was any evidence of computer or human error, but simply because it was decided that the pleas were sufficient and that a trial for theft would not have been in the public interest. I remember that the Defence for Mr Thomas had indicated that they were going to obtain an expert report. Tellingly, no such report was ever served.

The lessons to be learned from the *Misra* case

19. There are a number of lessons that can be drawn from *Misra*. I set these out in the hope that they may be of some assistance. I merely set out some lessons and tentative suggestions that I have derived from a difficult case.
20. Horizon is a complicated 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. I can say is that both sides in *Misra* were completely beholden to Gareth Jenkins and his deep knowledge of Horizon..
21. Although the technical aspects of Horizon are 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 I 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 enquiry.

- 22. 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 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. 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 eg. the Callender Square 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 Defence expert Professor McLachlan, is worthless.**
23. If in none of the previous cases the transaction logs were ever examined. Time-consuming and expensive though it may be, the only way to investigate the concerns raised by these former SPMs would be for the transaction logs from their offices, for the relevant times, to be obtained and analysed. 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.
- 24. 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 catastrophic, on-going losses. The evidence of other staff who have used the same equipment as a complainant SPM may be highly relevant, as the evidence of Mr Varsani 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.**

Hope this helps !

Jarnail

Jarnail Singh | Criminal Lawyer



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From: Sophie Bialaszewski
Sent: 11 June 2014 14:18
To: Jarnail Singh
Cc: Lena Hameed; David Oliver1; Rodric Williams; Melanie Corfield
Subject: RE: Bullets on M012

Hi Jarnail,

Thanks for this, would it be possible to get the bullets Rodric sent below with the correct numbers in?

- the trial being a fully contested adversarial proceeding, with X number of witnesses (including experts) being cross examined;
- that no appeal was ever pursued against conviction or sentence or both (or if it was, how far it went)
- the implications of a jury verdict (e.g. that it's 12 people unanimously agreeing that all elements of the offences were proved beyond reasonable doubt etc.)?

Your para is too emotive for us to use and so a factual account as above would be best.

Thanks
Sophie

Sophie Bialaszewski | Public Affairs Manager

GRO

GRO



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From: Jarnail Singh
Sent: 11 June 2014 12:48
To: Sophie Bialaszewski
Cc: Lena Hameed; David Oliver1; Rodric Williams
Subject: RE: Bullets on M012

Sophie

How about the following

“After a lengthy trial at Guildford Crown Court the above named was found Guilty of theft. This case turned from a relatively straightforward general deficiency case to an unprecedented attack on the Horizon system. We were beset with unparalleled degree of disclosure requests by the Defence. Through hard work of everyone, POL legal team and investigation team and through the considerable expertise of Fujitsu expert we were able to destroy to the criminal standard of proof (beyond all reasonable doubt) every single suggestion made by the Defence.”

It is to be hoped the case will set a marker to dissuade other Defendants from jumping on the Horizon bashing bandwagon.

Jarnail Singh | Criminal Lawyer



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From: Sophie Bialaszewski
Sent: 11 June 2014 12:35
To: Rodric Williams; Jarnail Singh
Cc: Lena Hameed; David Oliver1
Subject: RE: Bullets on M012

Yes please! Thanks Rod.

Sophie Bialaszewski | Public Affairs Manager



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From: Rodric Williams
Sent: 11 June 2014 12:30
To: Jarnail Singh; Sophie Bialaszewski
Cc: Lena Hameed; David Oliver1
Subject: RE: Bullets on M012

Hi – the Comms Team might need a bit more to help them tell our side of the story (Sophie – please correct me if I'm wrong!).

Is there any more detail you could provide, e.g. around:

- the trial being a fully contested adversarial proceeding, with X number of witnesses (including experts) being cross examined;
- that no appeal was ever pursued against conviction or sentence or both (or if it was, how far it went)
- the implications of a jury verdict (e.g. that it's 12 people unanimously agreeing that all elements of the offences were proved beyond reasonable doubt etc.)?

From: Jarnail Singh
Sent: 11 June 2014 11:08
To: Sophie Bialaszewski
Cc: Lena Hameed; Rodric Williams; David Oliver1
Subject: RE: Bullets on M012

Sophie

Something on the lines of;


Seema Misra was subpostmistress at West Byfleet. She was accused of stealing £74,609.84, between 2005 and 2008. On 21/10/10, after a 7 day trial, she was found guilty by the jury of the theft.

Regards


Jarnail

Jarnail Singh | Criminal Lawyer


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From: Sophie Bialaszewski
Sent: 11 June 2014 10:58
To: Lena Hameed; Rodric Williams; David Oliver1; Jarnail Singh
Subject: RE: Bullets on M012

Thanks so much Lena. Rodric / Jarnail would you be able to provide me with a bullet or two on the legal position e.g. unanimous guilty verdict by jury or whatever it would be.

Thanks
Sophie

Sophie Bialaszewski | Public Affairs Manager

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From: Lena Hameed
Sent: 11 June 2014 10:45

To: Sophie Bialaszewski
Subject: Bullets on M012

Hi Sophie,

We haven't got that much information as there is not CQR yet. But I imagine that the legal team will have the criminal case files – so Jarnail should be able to provide a breakdown of the merits of the case. As far as the scheme is concerned, this is a summary of what we have:

- Seema Misra was in post from 25th June 2005 to January 2009 at the West Byfleet branch.
- MP at the time of her application was Jonathan Lord.
- Incidents reportedly occurred in the summer of 2005.
- No specific references to Horizon issues – cites lack of support as the main factor leading to the losses.
- Alleges that PO threatened her and used mental torture.
- Howe and Co represented – funding agreement signed in November.
- Still waiting on a CQR from the applicant – apparently SS have it for refinement.

Thanks!

Lena

Lena Hameed | Legal Consultant

Phone:

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