

Comments on Ishaq DCS

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1. Introduction

I have been asked comment on the Defence Case Statement in the case of Regina v Khayyam Ishaq.

In order to do that I have copied in the DCS below in blue font and added in my comments in black font.

I'm not sure that the responses are of much use and I don't think there is anything that can really be added to my statement as a result. However if you feel any of this could usefully be added I'm happy to be convinced.

Much of it relates to requiring further data for analysis, and past experience indicates that help may be required in understanding it.

2. Defence Case Statement

1. This Defence Case Statement sets out in general terms the defence of Khayyam Ishaq and the principal matters upon which issue is taken with the Crown. It is served for no other purpose.
2. Nothing in this Defence Case Statement should be taken as constituting an admission as defined in Section 10 of the Criminal Justice Act 1967. No admission is made in respect of any matters or any assertion in the Prosecution case except where there are specific statements to the contrary in this document.
3. The Defendant reserves the right to challenge the admissibility of any material referred to in the Prosecution evidence. The Defendant further reserves the right to amend the Defence Case Statement upon disclosure of additional evidence or if further issues arise from material already served or served in the future.
4. Any failure to refer in this Defence Case Statement to the matters set out in the Prosecution evidence should not be taken as an agreement or acceptance of any such matter.
5. It is the defence contention at the outset that upon the limited material served by the Crown to support the prosecution case, that the prosecution case is unclear most particularly in relation to the manner by which the figure of £21,168.84 is quantified.

All of the above appears to be standard legal pre-ambles and doesn't require any comment from me.

General nature of the defence case.

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6. The Defendant is charged with theft of £21,168.64 contrary to Section 1(1) of the Theft Act 1968.

Again no comment. I have not seen any of the detail as to how this figure was arrived at.

Note that I have been involved in a previous case where the figure was disputed and was able to show why the defendant had misunderstood the way the system operated due to the way they were trying to hide the loss.

7. The nature of the Defence in relation to this allegation is :

- (i) There was no appropriation of monies. The Post Office "Horizon" software / hardware system had in the past on numerous occasions malfunctioned causing difficulties in reconciling sales, receipt and stock figures. The Defendant had reported the same to the Post Office helpline seeking assistance but little or no successful assistance was afforded to him despite the said requests.

If the defence can specify some examples of this, I am happy to investigate them. However I would contend that the system doesn't malfunction without leaving some trail to indicate what has happened. Without examining the logs it is difficult to be any more specific.

I think there are 3 possibilities here:

- the Defendant has not understood the way the system operates and that the difficulties in reconciliation have been due to the defendant's lack of understanding of the system and the way in which it operates
- The defendant has stolen the money
- There is a fault in the system

There is no evidence of a fault in the system (and the fact that the system operates without issue in 12,000 other branches supports this fact), so I would suggest that it is one of the other two. I can offer no opinion in identifying which is the case.

The Post Office Help line is run by Post Office Ltd and so I am unable to comment on the assistance it did or did not provide.

Note that this is a common complaint.

- (ii) The Defendant had of necessity to make certain adjustments by way of "reversals" on the Horizon system so as to ensure the sales, receipt and stock figures reconciled. This was done on the basis of clear malfunctioning of the system (and in accordance with the limited training given to the Defendant by the Post Office in the past with very limited support thereafter) and not in order to appropriate any sums of money.

I do understand that sometimes reversals are required as part of the Post Office Business processes to correct previous mistakes. However it is up to Post Office Ltd to comment as to those Business processes. Similarly it is up to Post Office Ltd to comment on the amount of training provided.

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As before I would contend that the system does not malfunction and require spurious reversals to be made.

- (iii) Accordingly there was no dishonest or otherwise appropriation of property and/or monies belonging to the Post Office.

No Comment required.

- (iv) The defendant contends that upon all core data from the Horizon hardware / software system (used by the Post Office Auditors) being provided to him the defence should be able to demonstrate that all sales, receipt and stock figures properly reconcile.

Not sure I understand this. Is he asking to see the detailed logs to do his own analysis? If so I would suggest that he may need some help in understanding them and in the past I have worked with Defence experts to provide that understanding.

- 8. The defendant accordingly denies that he was a party to any theft that may be proved by the prosecution.

No Comment required.

- 9. The defendant takes issue with each and every prosecution witness that asserts otherwise than the defence outlined above.

No Comment required.

- 10. The defence requires disclosure of all material in the hands of the prosecution and/or third parties (cited herein or otherwise) pursuant to the provisions of the Attorney General's Guidelines on Disclosure (as revised) that might reasonably assist the defence of Khayyam Ishaq and/or might reasonably undermine the prosecution case against him.

No Comment required.

Would it be helpful for me to look at such material as well?

- 11. Without prejudice to the foregoing the Defence specifically request :
 - i. The full file of papers relating to this investigation (as the paginated papers served upon the defence to support the prosecution are clearly a small extract of the full file of papers relating to this case)

No Comment required.

- ii. All material to the knowledge of the prosecution in existence (whether in the hands of the prosecution or third parties) that reasonably supports (or is reasonably capable of supporting) the contention that the Post Office Horizon software / hardware system has proved to be unreliable and/or inaccurate and/or unstable and/or susceptible to malfunction and/or otherwise prone to the production of erroneous results

I am not aware of any such material other than previous such challenges.

- iii. The outcome of all enquiries in relation to other Post Office Staff and/or contractors who have been the subject of investigation by the

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Post Office or any other investigative body in relation to allegations of dishonesty related to the use of Post Office Horizon hardware / software ;

I do not have this information, but presumably Post Office Ltd does. I am not aware of any such investigations where the integrity of Horizon has been successfully challenged (as I say in my statement).

- iv. The full results (whether provisional or final) of all internal and/or external investigations and/or enquiries and/or reviews (whether instigated by the Post Office or any other body) into the correct functioning of the Post Office Horizon hardware / software system ;

Again, I do not have this information, but presumably Post Office Ltd does. I am aware of an ongoing investigation into this area by an independent 3rd party which is due to report in a couple of month's time.

- v. Any internal memoranda and/or guidance notes and/or other material dealing with the correct or incorrect functioning of the Post Office Horizon hardware / software system ;

I don't believe that I have anything specific that comes in this category. I assume that this is being addressed by Post Office Ltd.

- vi. All Horizon system data for the period 2nd November 2011 to 31st January 2012 used to produce exhibit SB/21

I assume that this is the data returned in the ARQs by Fujitsu to Post office Ltd. I have not seen this, but would be happy to examine it if required.

- vii. An indication of the actual Horizon system data as would have been visible to the Defendant showing sales of stamps on dates referred to in Stephen Bradshaw's statement (Pages 17 to 21) and subsequent reversals referred to therein.

I'm not sure exactly what is meant by this. I assume it is an interpretation of the ARQ data and I would be happy to assist in its interpretation.

- viii. The original signed statement of Umair Liaqat

Presumably you have that. I certainly don't.

This defence statement has been read and approved by me.