

A IN THE CROWN COURT
AT GUILDFORD

No: T20090070

Bedford Road
Guildford

Tuesday 19th October 2010

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Before:

HIS HONOUR JUDGE N.A. STEWART

REGINA

-v-

SEEMA MISRA

(Transcribed from tape by Marten Walsh Cherer Ltd,
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Official Court Reporters)

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MR W. TATFORD appeared on behalf of the PROSECUTION

MR K. HADRILL appeared on behalf of the DEFENCE

PROCEEDINGS ON TUESDAY 19th OCTOBER 2010
(DAY 7)

Tuesday 19th October 2010

A

(In the absence of the jury)

MR TATFORD: Your Honour, can I apologise for my lateness this morning? I am so sorry.

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JUDGE STEWART: All right.

MR TATFORD: Your Honour wished me to make submissions on the section 34 point?

JUDGE STEWART: Yes.

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MR TATFORD: Can I list those matters that I submit are matters that the defendant could reasonably have been expected to mention in her interview? They are first of all the warning by the auditor that if she was £500 short again she would be suspended. Secondly, her dealings ---

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JUDGE STEWART: This is the 2005 audit?

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MR TATFORD: Yes. Secondly, her dealings with Junaid as she set out in her second defence statement and in her evidence. Thirdly, her dealings with the trainer, Michael.

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Fourthly, the fact that she told Timiko Springer, her area manager, that she had suffered thefts at the office, and finally a more general point, that the losses had been in existence from the very beginning which carries with it the inference that thefts alone cannot explain the losses.

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The defendant said in her evidence that she was not asked questions to give that information but it is important in my submission to look at the interview in its proper context. It followed a handwritten note being handed over by the defendant setting out her case and in fact the jury are perfectly entitled not only to look at failures to mention matters in interview but they are entitled to look at that note which makes no reference at all to these important parts of her case in this trial. So although it is technically right to say "I was not asked questions about Junaid. I was not asked questions about Michael", nevertheless she is

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A given an opportunity in that interview to say anything she wants and she has already been
thinking about matters because she has handed over the detailed note. So in my submission
although there is no question specifically in relation to any of those issues there never could
B be because the investigators don't know about those things that the defendant should have
known about and they cannot read her mind, but she is given an opportunity at the end of
the interview to add anything she wishes to and she does add something. She says she didn't
steal a penny. Those are my submissions.

C JUDGE STEWART: Yes. As to the first defence statement?

D MR TATFORD: In relation to that, again an inference is capable of being drawn from that.
It makes no mention at all of other causes of losses. It makes no mention at all of the list of
matters I have mentioned a few moments ago, and the jury will see the defence statement.
They will see the new defence statement. They can take on board any comments that Mr
E Hadrill makes as to the sufficiency or adequacy of the first defence statement, but they are
entitled if they think it appropriate to do so to hold the failure or the lack of detail in the first
defence statement against the defendant. It is a matter entirely for them but it is an inference
that is capable of being drawn. Is there anything else I can assist on?

F JUDGE STEWART: Not on this topic at present. Thank you.

G MR HADRILL: Your Honour, I submit in regard to section 34 for the interview it would be
unreasonable for adverse inferences to be drawn for this reason, that soon after – and
certainly if I can give a date, it is 12th March 08 – she is called for interview with the Post
Office. It is a lengthy interview and it has been referred to during the course of cross-
H examination of the defendant by my learned friend Mr Tatford, and what is complained
about now is absence in her formal interview which was not under arrest that the
investigating officers visit a number of these topics. Certainly there is mention about the

A £500, that she complained that if she was to be found to be short by £500 she would be
suspended. Clearly she maintains that she suffered loss certainly at an early stage although I
cannot find reference within it in regard to dealing with the trainer specifically, but those
B matters are referred to her to Post Office personnel on 12th March 2008. If the prosecution
so wished they could easily have re-interviewed her to clarify those issues. She was not
charged until I think the January of 2009.

C So having raised some of those issues with the Post Office soon after and she not
having legal support in certainly the interview on 14th January 2008 or in the Post Office
interview for suspension in March 2008, it would be unfair for reliance to be put, undue
D reliance to be put that those matters can be held against her because it could well be treated
as a failing of the post officer.

JUDGE STEWART: Are the contents of the 12th March interview in evidence?

E MR HADRILL: They are not at the moment and we have not dealt with it. I certainly did
not deal with it in cross-examination although it was referred to by my learned friend and he
did deal with some issues within it.

F JUDGE STEWART: There was mention of it certainly. So of the points that Mr Tatford has
identified you say that the £500 loss leading to suspension point and losses from an early
stage are mentioned in that interview?

G MR HADRILL: Are mentioned, and she does not specifically deal with Junaid, Michael and
Springer. I think I have to accept that, although there does not seem to be any question in
regard to training.

H JUDGE STEWART: If the jury are to be directed that it is possible to draw an inference
from the failure to mention those facts in January, it is only fair that the jury should know
that she did mention them in March.

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MR HADRILL: Yes. Perhaps if it is to be pursued by my learned friend for adverse inferences, and I say it should not in fairness be, perhaps there should be a short admission drafted?

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JUDGE STEWART: Yes.

MR HADRILL: I don't know if you would allow my learned friend and I five minutes just to discuss this matter or shall we deal with it later in the day?

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JUDGE STEWART: Yes. It can be dealt with once we have finished this brief discussion.

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The point has been the subject of cross-examination. I have to give the jury a direction one way or the other. I do not think that I can properly say to them that they may not reasonably and properly draw any inference depending on their view of these matters. I think I should give them the section 34 direction, making it plain that she did mention the £500 loss and the losses from an early stage, matters in an interview a couple of months later and to point out of course the circumstances at the time of the interview that she had never been in this situation before and she was not asked specific questions relating to those topics. So the jury will have to decide ultimately whether she could reasonably have been expected to mention them.

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MR HADRILL: I will see how my learned friend deals with it in his closing speech. I will deal with it hopefully in my closing speech and if it needs to be revisited before your Honour sums up we can look at it again.

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JUDGE STEWART: Yes.

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MR HADRILL: In regard to the first defence statement, I accept it is deficient. It is a question of whether that should be levelled against her. Again it is a question of direction to the jury in due course.

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JUDGE STEWART: Yes. I don't think I have to give them the direction. It is for them ultimately to decide whether the absence of mentioning these topics should be held against her.

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MR HADRILL: Your Honour raised the issue of good character. Clearly what she has pleaded guilty to was contained within the indictment before the jury as part and parcel, although the Crown certainly don't put it forward as a lesser alternative. They say that they are separate sets of offending.

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JUDGE STEWART: Yes.

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MR HADRILL: It is before the jury and I would ask that a qualified good character direction be given. Never before has she been involved. She has given her explanation as to how she came to make this offending, and she has given evidence and the jury can treat that until this offending she was of good character and she pleaded guilty at the first opportunity.

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JUDGE STEWART: I can certainly say all that but ---

MR HADRILL: I would certainly ask for a qualified direction.

JUDGE STEWART: Yes. I cannot give the full two stage good character direction, can I ---

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MR HADRILL: No.

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JUDGE STEWART: --- because she is not of good character as the law defines it. So what I can say is that the fact that she committed offences of false accounting does not necessarily mean that she committed the offence of theft. Indeed her whole case is that the false accounting offences were the consequence of theft by others and of shortages arising from the system.

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MR HADRILL: Yes.

JUDGE STEWART: That she has admitted those offences, never committed any offence before that, and that is the direction, is it not?

MR HADRILL: Yes.

JUDGE STEWART: Thank you. Those apart, I have to direct the jury of course on the functions of the judge and jury, the burden and standard of proof, the need for a unanimous verdict. The indictment, I will quote the legal definition and simplify it by saying it is dishonestly taking somebody else's property intending that they should not get it back. I will point out that the prosecution are not required to prove that she took exactly the sum set out in the indictment. As a matter of strict law it would be sufficient to prove that she stole a penny, but in reality in this trial the jury are not going to convict unless they are sure that she has stolen a significant part of the total figure.

MR TATFORD: Yes. Your Honour, in relation to an intention permanently to deprive, the Crown's case is that even if she did pay some money back that does not in any way mean that she didn't have the intention permanently to deprive because she has used the property as her own for her own purposes. It may be that some extra direction might be helpful to the jury to the extent that borrowing can amount to using property with an intention of keeping it if that borrowing is of an extreme nature.

JUDGE STEWART: What I have drafted is "if the defendant dishonestly took money from the Post Office for her own purposes but hoped in time to be in a position to replace the money she would nevertheless be guilty of theft."

MR TATFORD: That deals with it perfectly. Thank you.

MR HADRILL: Then it is just a question of the status of the experts.

JUDGE STEWART: Yes. Do you accept what I have said about the directions as to the indictment?

MR HADRILL: Yes.

A JUDGE STEWART: What I will go on to point out that the prosecution have to prove that
the reason for the shortfall in the accounts in January was not simply a computer error or
operator but it was substantially if not totally the result of theft from the branch, but I go on
B to say that that is not the end of it because the prosecution must make the jury sure not just
that the money was missing, not just that it had been stolen, but that Seema Misra had stolen
it, and they must therefore make the jury sure that what she said about the previous staff and
C other matters is untrue and that it is untrue because the truth is that she was the thief. Then I
will point out that there is no direct evidence of her taking any money, no eye witness, no
confession, no CCTV or fingerprints on marked notes or anything of that kind, no evidence
D of her spending or saving money or paying off debts. I will direct the jury that in the
absence of such evidence what the prosecution are doing is asking the jury to draw an
inference from all the circumstances.

E What I am saying here may be amended in the light of what I hear in the closing
speeches, but currently I have drafted this. "The prosecution argue that there must have been
a reason for her falsifying the accounts for so long. They suggest that her explanation is not
F credible and can be rejected. The prosecution then suggest that the only sensible reason for
her to have falsified the accounts was to cover up her own thefts. All those are points which
the prosecution are entitled to make but the jury need to remember that before they can
G convict Mrs Misra of theft they must be sure that the prosecution are correct in their
contentions and any other explanation for the circumstances can or must be excluded."

MR HADRILL: Yes.

H MR TATFORD: Could I just raise one point on what your Honour has very helpfully told
us?

JUDGE STEWART: Yes.

A MR TATFORD: In my submission the Crown does not have to prove that what she said
about theft by other staff was untrue because in fact her evidence now is that the full loss
was much bigger than £74,000. Taking her answers to your Honour's question, if she was
B taking £100 a day in 2007 the figures are going to be over £100,000, perhaps £115,000,
something like that. My understanding of Mrs Misra's evidence is that she accepts that the
thefts by staff cannot explain the deficiency. My understanding is that it goes no further than
C about £20,000 or so. I am going to suggest to the jury that it may well be the case that there
was a dispute between staff and it may well be the case that the defendant believed that she
had had some thefts in the post office, but it simply does not go to explain the full
D deficiency. If true it only goes to explain a fraction of it which might be a similar figure to
the amount that the defendant says she has repaid.

JUDGE STEWART: I take your point, yes, and then the experts?

E MR TATFORD: Yes.

F JUDGE STEWART: I have reminded myself of the guidance from the Judicial Studies
Board as recent further guidance, and I will be telling the jury that neither Mr Jenkins nor
Professor McLachlan of course was present at the time so neither can tell the jury whether
G Mrs Misra is guilty of theft or not. What they can do is assist the jury with technical matters
about which they are experts and we are not, but expert evidence has to be evaluated in the
evidence only and the jury make their judgment on all the evidence, that if the experts agree
then normally no doubt the jury would accept that if the experts agree on something the jury
would no doubt normally accept that although they are not bound to if there is good reason
H not to do so. If the experts disagree, judging the competing views is a matter for the jury
based on their expertise, their findings, the quality of the material. If they don't accept an

A expert's opinion the jury should not act on it and it is for them to decide how significant it all is.

B It would seem to me that the ultimate issue is whether the jury agree with the prosecution's case which as I have drafted currently, subject to your observations, is that there is ample evidence to establish that Horizon is a tried and tested system in use at thousands of post offices for several years and fundamentally robust and reliable, or do they accept the defence argument that unless someone independent like Professor McLachlan has C an opportunity to perform a complete audit of the system with access to any underlying material that he feels is necessary you cannot be sure that Horizon is sufficiently reliable to base a decision on it in something as important as a criminal trial, and then to deal D specifically with the Calendar Square issue as part of the direction.

E MR TATFORD: Yes. I will be submitting that the defendant's own evidence excludes Calendar Square. She didn't describe the Calendar Square symptoms at all. But I entirely agree with your Honour's direction. I am just giving some forewarning.

JUDGE STEWART: That is just a taster, as it were?

F MR TATFORD: Yes.

JUDGE STEWART: All right. Anything else that I need to consider or direct the jury on?

MR TATFORD: No. Thank you.

G MR HADRILL: No. Thank you.

H JUDGE STEWART: Right. Can it simply be agreed orally that in an interview on 12th March 2008 Mrs Misra did mention being told in the 2005 audit that if she had any losses of £500 or more she would be suspended?

MR TATFORD: I am afraid it cannot. I have checked the interview. What she actually says is "I knew I would get suspended if short of £500." That clearly may be a reference to the

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warning by the auditor but there is no explicit mention of the warning itself, unless I am misreading something.

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MR HADRILL: Can I say the trouble is that these are notes and they are explained as being notes and not detailed or not.

JUDGE STEWART: Right.

C

MR HADRILL: And so it is raised. We do not know the degree it is raised because we have not heard from ---

JUDGE STEWART: The relevant part of the note can be agreed?

MR HADRILL: We can agree that between ourselves.

D

MR TATFORD: Yes. I hope so.

JUDGE STEWART: All right. You will need five minutes to do it.

MR HADRILL: Thank you.

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JUDGE STEWART: I believe the jury may be proposing to write something down. I will ask the usher to pop out and see if it is ready. (Pause) There are five questions. "When you buy a ticket for the Lottery is it on the till in the shop and how is it related to the Horizon system?" That is number one. "How long was it that she dismissed Nadia after dismissing

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her husband for suspected theft?" That is number two. Number three: "Where is any statements from the trainees ---" – presumably "trainers" – "--- or cross-examination by the barristers in court on her honesty or ability to be the boss of the post office or even the area manager?"

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MR HADRILL: Could you repeat the last one about the area manager, please?

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JUDGE STEWART: It just simply says "or even the area manager" and I read that as meaning "where is there a statement from the area manager?" That is my guess.

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MR HADRILL: I thought I had dealt with that. There are no statements. They have no records.

JUDGE STEWART: I am just reading out the questions at the moment.

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MR HADRILL: Sorry, yes.

C

JUDGE STEWART: Number four: "Has Mrs Misra's husband the authority by the Post Office to unlock the Horizon system and get into the post office section?" Five: "Was Mr Misra in charge of the Lottery till as well as Mrs Misra?" I have read those questions out so that they are on the record. I am going to hand down the note so that the two of you can have it and consider how we should proceed as part of your discussions that you were going to have in any event and I will hear from you, I think it is probably going to be 11 o'clock, now.

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MR HADRILL: Would your Honour permit a photocopy to be taken of this note?

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JUDGE STEWART: Of course, yes.

MR HADRILL: Thank you very much.

(Adjourned for a short time)

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MR HADRILL: Your Honour, I think we have resolved all the matters. Does your Honour have a copy of the proposed admissions or agreed facts?

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JUDGE STEWART: No. (handed to his Honour) Thank you. (Pause) Yes. That is very helpful. Thank you.

H

MR HADRILL: Thank you. In regard to the series of five questions, number one – I stand on my feet but Mr Tatford could equally deal with this ---

JUDGE STEWART: Yes.

MR HADRILL: "When you buy a ticket for the Lottery is it on the till in the shop and how is it related to the Horizon system?" I think we have in passing dealt with this in the

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evidence, that it is computer generated and at the end of the day there should be a printout as to how much has been sold and that in due course has to be transferred on to the Post Office system.

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JUDGE STEWART: So tickets are bought in the shop?

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MR HADRILL: It is not the ticket because they are scratch cards. I don't think this deals with the scratch cards. This deals with the Lottery ticket itself, and so you fill out a little coupon. If my memory serves me right, when I have been sent along you fill out six numbers in a coupon. This is what we are talking about, and then it goes into a machine.

D

JUDGE STEWART: There are various ways of buying a Lottery ticket. But the customer enters in the shop?

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MR HADRILL: Yes.

JUDGE STEWART: Pays in the shop?

F

MR HADRILL: Pays in the shop and at the end of the day the figures are transferred to the post office.

JUDGE STEWART: To the post office, yes. Question two?

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MR HADRILL: "How long was it that she dismissed Nadia after dismissing her husband for suspected theft?" This is in evidence. First of all, it is not the husband. It is the sister in law.

JUDGE STEWART: Whose name was?

H

MR HADRILL: The same surname, Badiwalia.

JUDGE STEWART: Yes, and the first name, were we told the first name?

MR HADRILL: Javed Badiwalia and Nadia Badiwalia. So Javed was dismissed it appears from the evidence at the end of February 2006. We then have the incident on the crime report of this disturbance with Nadia and the defendant on 8th April 06, so the period is

A about five to six weeks at the most. In regard to number three: “Where is any statements from the cross-examination?” that is paragraph 2 of the admissions.

JUDGE STEWART: Yes.

B MR HADRILL: Paragraph 4 of the jury question sheet: “Has Mrs Misra’s husband the authority by the Post Office to unlock the Horizon system and get into the post office section?” This was dealt with in evidence. What happens is that the sub-postmaster or
C mistress is responsible. They employ their own staff and train their own staff. Staff employed will have access to the Horizon system granted by the post-master, post-mistress and does not require the authority of the Post Office direct.

D “Was Mr Misra in charge of the Lottery till as well as Mrs Misra?” Mrs Misra has already given evidence to say that any staff employees in the shop operated the Lottery till which would obviously include Mr Misra as evidenced by the fact that Mr Misra was in the shop on 14th January 2008 when Mr Longman attended for his audit along with Mr Raza. So
E hopefully that answers the jury’s questions without having to call any further evidence.

F JUDGE STEWART: Yes. I am looking at question four. The sub-postmistress is responsible for the post office section?

MR HADRILL: Yes.

JUDGE STEWART: They train and employ their staff. The staff have access ---

G MR HADRILL: To the Horizon system.

JUDGE STEWART: --- to the Horizon system.

MR HADRILL: To obviously undertake their duties which Mrs Misra has asked them to do.

H JUDGE STEWART: Thank you.

MR HADRILL: Hopefully that answers all the questions raised.

JUDGE STEWART: Thank you. The jury, please.

(Jury return to court)

A

JUDGE STEWART: Thank you for the note, members of the jury. I hope that we are able to give you answers without delaying matters any further. The first question on this note was “when you buy a ticket for the Lottery is it on the till in the shop and how is it related to the Horizon system?” The evidence is that Lottery tickets or scratch cards, whatever it is, are bought in the shop on a shop till. There is a printout at the end of the day showing how many were sold and that is transferred over to the post office. Question two: “How long was it that she dismissed Nadia after dismissing her husband for suspected theft?” The person called Javed – I am told it is not actually her husband but her sister in law – the evidence is that person was dismissed at the end of February 2006 and you heard about the crime report relating to the disturbance with the other person which was 8th April 2006. So it was Nadia first and Javed second I think. Is that the right way round?

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MR HADRILL: Javed first, Nadia second, and it was the sister in law, not husband and wife.

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JUDGE STEWART: Yes. Three: “Where is any statements from the trainees or cross-examinations by the barristers in court on her honesty or ability to be the boss of the post office or even the area manager?” A new document headed “admission” has been drafted which sets out some facts which are agreed. The second of these facts is to this effect. “In early 2010 Jon Longman spoke to the trainers Michael and Junaid and to Timiko Springer about their dealings with the defendant. They all said they had no recollection of events so long ago. There are no written reports to refresh their memory.”

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Question four: “Has Mrs Misra’s husband the authority by the Post Office to unlock the Horizon system and get into the post office section?” The evidence is that the sub-postmaster or mistress is responsible for the post office. They train and employ their

A staff and staff have access to the Horizon system to undertake their duties. Question five:

B “Was Mr Misra in charge of the Lottery till as well as Mrs Misra?” The answer to that is all shop employees, according to the evidence, operated the Lottery till including Mr Misra who was of course there on 14th January. So that I hope deals with the questions you have asked.

C The document headed “admission” that I referred to a moment ago that dealt with the trainers and so on begins with a first admission which is to this effect. It is in the context of interviews with Mrs Misra. You will remember she was interviewed on 14th January after the audit and you have a photocopy of the record of that interview. What this admission states is this: “The defendant was interviewed for disciplinary purposes on 12th March 2008. D The summary of that disciplinary interview includes the following comments by Mrs Misra. (a), ‘I knew I would get suspended if short of £500 was found’, and (b), ‘tills were always short 700 or £800.’ The summary of this interview is not verbatim. Some passages are summarised. Some passages do record the actual words used.” Yes, Mr Tatford? E

F MR TATFORD: Thank you, your Honour. Members of the jury, before I move on to making my closing submissions to you can I pass out some documentation? First of all, the admission that has just been read out by his Honour. There are copies for you, so can I pass up six copies of that, please? (handed to jury) I will hand up mine I am afraid but I hope it is not too difficult to read. Can I pass the original signed copy for the court file, please? G

H Secondly, you heard yesterday about defence statements in the case, how there were two, and also a letter sent to the prosecution by Mrs Misra’s former solicitors and then the final detailed defence statement. I have copies to hand out to you. So can I first of all hand out the first defence statement? (handed to jury)

A MR HADRILL: Can I say on the defence statement, the second one, there is some
handwritten comment. It should be ignored because it is dealt with in the admissions which
have just been read. That is not from the defence. It is the prosecution's solicitor on the
second one.

B MR TATFORD: There is actually a handwritten piece of writing on this one saying "old"
which may be of some assistance. That is the first defence statement that was given. These
C documents sometimes have a lot of matter that perhaps isn't particularly important, but the
important passage for this defence statement is on the second page where it says, there is a
D heading in the middle of the second page saying "Defence. The nature of the defence and
any particular defence upon which is it intended to rely is as follows. The defendant denies
dishonestly appropriating money belonging to the Post Office and will assert that the theft
was undertaken by other employees working at the post office at the time the monies went
E missing." So that is that first defence statement.

F Mrs Misra also told you in answer to some of my questions yesterday there was a
further letter from her former solicitors giving the details of the alleged culprits for the theft,
so can I pass out that as well, please? (handed to jury) The letter, I will read out perhaps the
important parts of it. "You may recollect that at the plea and case management hearing on
G 20th March, his Honour Judge Critchlow directed that the further amended defence case
statement be served which identified those persons working at the post office which Ms
Misra suspected of having been responsible for the thefts of the monies. Rather than file a
further defence statement it is probably easier if we provide you with their details which are
H as follows", and then you can see the three names set out with their addresses. There is a
comment at the bottom as to the identity of defence counsel at that stage but you don't need
to trouble yourself particularly about that. So that is that letter there.

A Then finally the detailed defence statement that was served I think we heard
yesterday on 21st January of this year. (handed to jury) As Mr Hadrill said a moment ago,
there is a little bit of handwriting on this document. Unfortunately it has been difficult to
B find a completely clean copy to photocopy. There is no mystery about it. The handwriting
was essentially ticking whether things had been done or not, and it makes it rather difficult
to make out what the handwriting says, but it does not matter very much. The matters are all
C in evidence where there is evidence of them.

This is a long document. The first page, as I said in relation to the other
D document, probably does not help very much. It is a preamble really. The detail that matters
begins on page 2 where the details of the defence case as to be run in this trial are set out
and in considerable detail, the Crown acknowledge that. 5(a)(i) deals with Junaid. (ii) deals
with Michael and then Timiko Springer is mentioned, (b)(i), just towards the bottom. You
E will see that there is no reference there that the defendant told Timiko Springer about thefts
and I cross-examined her on that.

Over the page – I am simply summarising this so you have a feel. If Mr Hadrill
F wants to refer to particular points about the defence statement in his speech he no doubt
will, but you will have leisure while you deliberate on the evidence to read the document in
as much time as you need. But over the page there are references to the thieves that Mrs
G Misra thought she had found. Paragraph (c) says in fact that she was satisfied that Shakia
Suksener was not accountable, not a theft, which does not tie in with the earlier letter where
her identity is set out as a thief, but the incident with Javed Badiwalia is set out and also
H Nadia “Bakliwalia” it is spelt, I think that is an obvious typing error, and various other
details are set out in these paragraphs ending in (f) setting out the general nature of the
defence.

A There are further paragraphs on the third from last page about the losses
continuing to rise, amounting eventually to £74,000. Calls to the helpline are set out. Then
over the page, the penultimate page, “matters on which issue is taken”, it does not really add
B much detail there. Then as is often the case in these documents there is a request for
disclosure at the end which is really a list of material that the defence want. It is there so you
can see it, but it may be that you take the view that what matters in this defence statement is
C the details of the defence and you will compare it with what has been said before in a
defence statement and indeed with the evidence that the defendant gave, and it is for you to
assess whether there are any inconsistencies and to what extent any inconsistencies help
D you.

So apologies for the extra documentation, but hopefully it is helpful to have it
there set out so if you need to look at it at any stage while you are thinking about the case
E you can.

PROSECUTION CLOSING SPEECH:

F MR TATFORD: Let me then move on to my closing speech to you. I am afraid I will take a
little time. You are probably sick to death of my voice in this case but there has been a lot of
evidence actually and some matters have emerged that have been important. Some matters
G have emerged that actually turned out to be irrelevant, so if I tie some strings together on
behalf of the Crown I hope that will be helpful. Mr Hadrill then of course will speak to you
for the first time about the defendant. He will make no doubt excellent points on her behalf.
H But the point of the speech is to help you. You are not going to accept everything we say
because we are coming from different sides, but comments are meant to help. But speeches
are not evidence. You judge the case on the evidence.

A

The Crown's case, as I opened to you, is essentially a simple one. Put on one side all the detail you have heard, but this defendant cooked her books to hide a catastrophic loss at her post office, and the Crown say there is only one sensible reason for her doing that.

B

She was stealing the money because otherwise it was in her interests not to hide things but to reveal things. If she thought thefts were going on, if she thought she could not handle the equipment, she should have told the Post Office and if she reported the thefts at an early stage then maybe she would not be liable for that loss. It was in her interests always to be honest and open with the Post Office. There is no honest and sensible reason for fiddling the accounts other than that she was stealing the money. Any other reason, the Crown say, is nonsense.

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That is the Crown's position and I will go on to explain those remarks. But that is how the Crown put the case, in a simple way. There is a hole in the account. The money has gone. The defendant has taken it the Crown say because she was the one who obscured the trail, who made things look to the computer like everything was fine. She has no reason for doing that whatsoever unless she is the thief, and her suggestion that she was worried about losing the post office is bonkers because she was suffering catastrophic losses. She has no sensible financial reason for keeping hold of the post office. She has lost as much as she is ever going to get in a sale. She should have shut it down. She should have resigned, got somebody else in and she could get the rent from somebody capable. So her account for falsifying the accounts, "I wanted to keep the post office" is complete – it is a financial suicide wish because she was losing every single day £100 a day she was saying even in 2007. You cannot run a business like that. There is no point keeping hold of a business like that. It is a disaster. So the Crown say that does not make any sense. She fiddled the accounts because she was stealing because if she didn't fiddle them then the Post office

A would have an audit straightaway. Those figures would be seen at Chesterfield and in the auditors would go.

B The Crown's case is as simple as that, but the defence case is rather more complicated and it is important that I deal with that appropriately. There were three pillars to the defence case, three ways in which they say on Mrs Misra's behalf that the deficiency can be explained. First of all, thefts by employees, second, a computer problem, third, Mrs C Misra's incompetence. One of those alone you may think does not explain the deficiency but a combination of the two might. They are all perfectly reasonable theories, but the question is for you whether the theories are based on any evidence at all or whether you can D dismiss the pillars as phantoms not based on any evidence or any sensible commonsense interpretation of the evidence.

E But let me deal with the three headings. Thefts, first of all. This was the only issue raised by Mrs Misra not only in her interview but when she handed that handwritten note F over. She has thought about what she wants to say. She gives the information she wants to to the auditors and she fails to mention that she had losses from the very beginning. She fails to mention that she might have been incompetent. The only pillar she gives any G indication of in her handwritten note and in her interview are of thefts. So until a very recent stage in these whole proceedings she was only relying on one pillar, not three.

H One pillar does not work because Mrs Misra has now confirmed to you in her evidence that the losses didn't stop when she sacked the thieves. They didn't stop in the middle of 2006 when she sacked the thieves. They continued, and she was losing – in answer to one of his Honour's questions – she was losing £100 a day in 2007. So it cannot all be explained by thefts of employees because she had got her eye open for that sort of thing. She has the password to be used properly. She has user names, and she trusts the

A people that she is working with once she has sacked the thieves. One of them is her
B husband. She is going to trust him and he is going to trust her and if there was any
C wrongdoing that may have been something that was known by both of them. But she trusts
D people. She is not saying the thefts continued after 2006, so that account does not work.

E It does not work also because of the figures in the accounts because the figures,
F the exaggerated figures, go up. They don't plateau as they would if the cause of the loss has
G ended. They continue to go up, and you can see that on the indictment. Just look at the false
H accounting counts and see how the figures go skywards pretty rapidly. That is because the
hole is getting bigger so she has to invent bigger fictitious figures. So Mrs Misra has
accepted that the losses continue. So thefts cannot explain everything.

What is clear is that there was some kind of dispute at the office about thefts
because we can see it in the calls to the helpline. There are I think four calls that Mr Dunks
talked about in February 2006 where she was saying "I am 6,000 short. There is a problem
on two stocks." You have heard a little bit more about this. You have heard rather bizarrely
about Mr Badiwalia going to the police, not Mrs Misra, but there was obviously something
going on. At the very least she was making accusations against her staff. That is why he
went to the police. Of course if he had actually been stealing he would hardly have gone to
the police. He would have been delivering himself up to them on a plate.

But there was obviously some kind of dispute, and it may be the case in fact that
Mrs Misra genuinely believed that there was some thieving going on because otherwise why
ring the helpline? Why ring the police at all which she does about Nadia Badiwalia, not in
fact about theft, because she is causing something of a scene over the phone. But
nevertheless Mrs Misra is in contact with the police to an extent, so there is some sort of
dispute going on and it may well be the case that her employees were stealing from her a

A little bit but it does not explain the full loss. On her evidence they are not really stealing more than £20,000 from her, nowhere near the £89,000 figure that she mentioned in her interview. In fact as you know, she has paid back a good deal of money herself she says, so in fact the real hole isn't £74,000. It is more like £115,000. In 2007 if she was losing £100 a month(?), if you exclude Sundays but six working days you are going to get a loss of well over £30,000.

C So even if there were some thefts it does not help Mrs Misra very much. It just explains part of the hole in the accounts, and you know the hole now having heard her evidence is actually much bigger than £74,000. That actually represents the hole that still existed, she having paid back in £20,000 odd. You heard the evidence from her sister in law yesterday and the bank statement – in due course we eventually found it – that supported what she said.

E So thefts don't explain the hole at all and Mrs Misra does not seek to say they do, and even if what she is saying is true and her suspicions were justified it does not give her any sort of explanation that amounts to a defence. So you have to look elsewhere.

F Computer error is the second pillar raised by the defence. This of course I suppose could explain everything, although it is a strange sort of computer error we have got here that only causes losses. It never seems to cause a surplus. It always seems to go one way.

G I conceded in my opening speech to you that no computer system is infallible. There are computer glitches with any system. Of course there are. But Horizon is clearly a robust system, used at the time we are concerned with in 14,000 post offices. Mr Bayfield talked about 14 million transactions a day. It has got to work, has it not, otherwise the whole Post Office would fall apart? So there may be glitches. There may be serious glitches. That

A is perfectly possible as a theoretical possibility, but as a whole the system works as has been shown in practice.

B Professor McLachlan of course has said “I am not satisfied about it. I would like to do my own independent audit” and he feels frustrated that he has not been able to examine Horizon from top to bottom and indeed every single area of the whole computer system. The Crown say unfortunately it might have been more sensible as a way of helping Mrs Misra to actually ask her what problems she saw and go and start it at that end rather than going at the whole Horizon system but there we are. That is what he chose to do.

C It is up to you what you make of Professor McLachlan’s evidence. He is clearly independent to the extent that he is not working for Mrs Misra’s solicitors or he is not working for a rival computer company or anything like that. He is an independent expert. He is also an eminent expert. He obviously knows computers backwards. But the fact is you may think that for all his expertise and all his undoubted hard work he has not actually helped Mrs Misra one jot, has he? He has not helped her at all. He says he cannot exclude system failure, but in fact he also says “I have not actually found anything.” His evidence was “I have not found something. I cannot say I have found something but I cannot exclude system error.” How does that help her at all? The only reason he could not have excluded it apparently was because of Calendar Square and he suggested “I need the archive material to check that the summary in the peak incident report is right.” He was being rather strict there.

G But in fact what he didn’t know, and it is perhaps a disadvantage of the experts being called back to back, he didn’t know what Mrs Misra was going to say about Calendar Square, did he? The whole point of Calendar Square and indeed any computer problem is that the operators can see something is going wrong. They are not going to know what the problem is, what the cause of the problem is, but they are going to see that something is

A going wrong, and if something is going wrong with the computer they will phone the Fujitsu
helpline. Calendar Square is a good example of that, in that it is a post office in Falkirk. The
operator saw that something was wrong and they called the helpline. It was an obvious
B problem to any operator. Professor McLachlan concedes that the peak incident summary
does not disclose the obvious symptoms of Calendar Square, so you may think in fact he is
being rather strict in not being satisfied by that because the symptoms are obvious and there
C is no record of it and why on earth would that peak incident report be incorrect? There is no
point to it. It is supposed to summarise the engineer's findings.

But the main point is that Mrs Misra is not saying "Calendar Square happened at
D my branch." She is not saying "oh, yes, I saw that there was a problem. One till was saying
they had sent money to another till but the other till didn't receive it." She didn't say that at
all. Her evidence was that what she was aware of was that money had been transferred to
E Mr Badiwalia's till but she knew it had been transferred because the Horizon record, the
printout, would say the cash is there, so it is not a failure of communication. The printout
says the cash is there but it is not. That is what she was saying.

F She used the word "transfer" but she was not saying Calendar Square happened.
She was not saying that tills tried to transfer money and failed so it was a record of the
communication being sent but not received. She was not saying that at all, and that is what
G happened in Calendar Square. So in fact Calendar Square, properly disclosed in detail you
may think to the defence so they can investigate it, properly investigated by Professor
McLachlan, but in fact it has been given great importance in the case, but now we know
H from Mrs Misra's own evidence that it is a complete red herring. It is completely irrelevant.
She is not saying she saw the symptoms. All that Calendar Square does is it shows a way in
which a computer can go wrong. You don't even need an example. Of course computers can

A go wrong, but the point the Crown make is if something is going wrong the operator knows it, that is the point, and Mrs Misra has given you no evidence whatsoever of being aware of a computer problem.

B Of course she said when it came to the latter stages of this period of catastrophic losses she didn't bother checking things any more, but Calendar Square was cured in March 2006 and she was looking properly then. She was no doubt trying to look under every possible stone to find out what was going on. So Calendar Square is a red herring.

C I say that. Mr Hadrill may have a reason for explaining that it isn't, but that is her own evidence from Mrs Misra and if anybody knows what was going on at the post office she does. Professor McLachlan does not. Mr Jenkins does not. They were not there, but Mrs D Misra was.

E So Professor McLachlan's anxiety about system failure in fact appears to be based on an irrelevant red herring. So what evidence is there of a computer problem? There is none and you judge the case on the evidence. Mrs Misra was very fair in saying – this was in a short moment in her evidence – but she said, she accepted that the prosecution had disclosed properly matters that might suggest computer error and she said that that had been F properly done and properly investigated. She was fair enough to make that point. The defence have had Calendar Square. They have had that to look at, but it does not work for this office.

G Professor McLachlan didn't seem to think that Mr Vasarmy's evidence was important at all. He seemed to think that was a red herring. You may disagree on that. Mr H Vasarmy did not sustain any computer problem, any serious problem at all using the same equipment that Mrs Misra had used. Commonsense suggests that that is at least evidence that suggests there was no real computer problem and that this is all a piece of fantasy.

A When the post office was handed over, the handover audit, there was a deficit of
£1.88, so there does not appear to have been a computer problem causing massive losses
before Mrs Misra. There was no problem before. There was no problem afterwards. Why on
B earth should there be a problem just when she is fiddling the accounts? Commonsense
suggests that you are entitled to look at those matters that Professor McLachlan for
whatever reason didn't think were so important.

C Other theories of Professor McLachlan he accepts were wrong and so they were
not put in front of you in any detail. It is perfectly legitimate to raise theories but when it
was explained to him by Mr Jenkins he abandoned those theories. The fast cash button, that
D was raised as a point. Press the fast cash button and you can easily make a mistake, it is all
done so quickly – a perfectly legitimate point and Professor McLachlan thought he had an
example of a failed credit card transaction for £7,000 which didn't seem to have been
E reversed, so was this an example to back up his theory? In fact Mr Jenkins, fortunately you
may think otherwise Professor McLachlan would have been relying on this very heavily, but
fortunately Mr Jenkins was able to show, in fact show to Professor McLachlan, that it had
F been settled by cheque. So that fast cash theory, failed credit card transactions didn't work.

G Although Professor McLachlan said there may have been some other transactions
which may have not been reversed, in fact Mr Jenkins didn't analyse those, but the
Professor very fairly conceded that the amounts are too small to have any significant cause
on the loss in the office.

H He was worried about transaction errors, ignoring the point that the sub-
postmistress in this case has to accept them. He failed to see that Mrs Misra on three
occasions had challenged transaction corrections and asked for evidence. He failed to
appreciate that. It had to be pointed out to him by Mr Jenkins. His theory about that appears

A to be “perhaps the Post Office have failed to tell Mrs Misra about transaction corrections in her favour. Perhaps somewhere at head office there is £75,000 owing to Mrs Misra that the Post Office have forgotten to tell her about.”

B You may think that if that was a real theory that Mr Bayfield could have helped on that because he knew a lot about transaction corrections. He was able to explain how when the money, the bag and the money, when it is counted it is video'd, the safeguards in operation. You may think in fact that Professor McLachlan was really indulging in a C moment of fantasy and a moment of imaginative possibilities rather than a genuine possibility. Do you really think that there is a whole box of transaction corrections waiting to be sent to West Byfleet to save the day for Mrs Misra? It is not very likely, is it? D

E Usually of course a sub-postmaster will realise that a mistake has been made and they will be on the phone saying “where is my money? Where is my money?” That is what Mr Vasarmy would do. But Mrs Misra, no. So it is a theoretical possibility that when you F examine it does not make any sense at all. Professor McLachlan was worried about paper vouchers. It is a bank, not a shop. It probably is between a bank and a shop, a post office, but Mr Vasarmy explained that he could get evidence for any loss. He could get a printout for any transaction. It is easy. So the lack of paper vouchers, it is a criticism but without any sensible purpose at all you may think.

G Re-calibration. If the screen is skewed you end up pressing the wrong buttons even though you think you are pressing the right ones. Of course that is possible, and there was a problem with calibrations reported in the helpline calls, but the fact that it was reported suggested the staff noticed it which suggests that there cannot have been many H mistakes, not enough to make as we now know £115,000 hole. No, they notice it, and the customer would notice it. They would say “why have you handed me a television licence

A when I came here for a book of stamps? Why have you handed me the wrong change?" It is not going to explain it. It is a theoretical possibility but one that does not suggest in an evidential way that it had any effect at all on the catastrophic loss that Mrs Misra was suffering.

B What Professor McLachlan did was that he essentially agreed with Mr Jenkins – there was very little between them at all – and he agreed on this. It all depends on Mrs Misra. What in effect he was saying to you was "I was not there. I don't know what C happened but these are theories and I have looked at a lot of data to see if the theories work", but it all depends on Mrs Misra. It is for her to explain if she wants to why the D accounts are in a mess. It might suggest that she is completely incompetent. On the other hand, it might suggest she is stealing because of course the account, everything is going to be in a mess if the boss is a thief. They could not care less about daily tallying of accounts because they are stealing. They could not care less.

E Professor McLachlan acknowledged that there was nothing he had found at all in his investigations that was inconsistent with the Crown's suggestion that Mrs Misra was F stealing over a long period. So it all depends on her. He makes findings but you have to judge his findings and Mr Jenkins's findings by the evidence of Mrs Misra, and Calendar Square is a good example of this because Mrs Misra's evidence shows that it is irrelevant. So there is no evidence of computer error at all. If Mr Hadrill can find some for you it will G be very interesting and important to hear what he has to say, but there is none.

H Professor McLachlan complains that he does not have all the data he wants, but be fair about that. If you imagine all the data you could have if you really wanted and printed it off it would fill this room. What he was given though was thirteen months of every single transaction at that post office, and the reason he was given those thirteen

A months because that was the period after which thefts by employees had stopped, because
he talked about the need for lab conditions for his experiments. This was giving him lab
B conditions. He didn't want to look at data tarnished by theft by employees. He needed to
look at data to see data untarnished by other things going wrong to see if there was a
C computer problem, and thirteen months of looking through all this data he didn't find a
bean. There we are. It is a matter for you. If you think that all this could be down to some
terrible computer problem that has been unidentified by two experts so be it. But the Crown
D say it is a red herring raised at a late stage by the defendant because she knows that her first
account simply does not work.

E So we are left with the final pillar, incompetence. Mrs Misra actually seemed
rather reluctant to say that she was incompetent because in fact when she gave her evidence
in chief when Mr Hadrill was asking her questions she talked about the training, and there is
no suggestion she didn't understand, no suggestion she didn't feel confident to start up a
F post office. When I asked her the question "did you have confidence you could run the post
office?" do you remember the inordinate pauses before she gave an answer? The reason for
that was she knows it is complete rubbish to say that she is an idiot. She is not an idiot. She
was over-qualified for this job.

G You have seen her CV. Quite what she is saying about the CV is a bit of a
mystery because you either say it is right and true or it is misleading and she seemed to
rather slip between the two, but even on her account as to what all those things mean she is
over-qualified for the role of sub-postmistress. She is computer literate. Horizon was
H designed for people who had no IT experience. So the Crown say that this suggestion of
incompetence is based on no evidence whatsoever.

A Mr Hadrill was painting a picture of a classroom in cross-examination of Mr
Bayfield where Mrs Misra might have been sitting there, “oh, dear, I can’t understand this
and I am frightened to ask a question.” That is rubbish when you saw her, complete rubbish.
B She did understand the system. It is not difficult to use. You need to be trained to use it. You
cannot just go into a post office and open it up, but a week’s training and then having the
trainer’s assistance, it is not meant to be difficult. It would be crazy if it was difficult. That
C would be disaster for the Post office. It has got to be easy. Professor McLachlan could not
find anything that was difficult about it.

D What he did say is that there were an awful lot of discrepancies which does
suggest financial mismanagement, but I have dealt with this already. There was financial
mismanagement on any view, but the question is why? If Mrs Misra was innocently
E suffering losses she would have ensured that everything was completely shipshape to try
and get rid of these losses. It makes no sense to sort of giving up, “oh, dear, I am losing
£100 a day. Never mind. I will just get my sister in law to give me all her savings and pay it
F back that way. At least I will be able to sell the post office one day”, having made what sort
of loss? Is she going to wait until she has lost half a million or a million pounds? How long
is it going to go on for? So the fact that stocks were open for the auditors to see, that does
not suggest that Mrs Misra is incompetent. It means that she does not care about the rules
G because she is stealing. £1240 has not been paid into the Horizon system. Who was there on
the Saturday? Mrs Misra.

H Of course it is not only stored on the Horizon system. The computer does not
know it is there. So you can take that 1240 and put it in one of your pouches. You can use it
for all sorts of purposes. Eventually you are going to have to reconcile it and put it into the
accounts, but it is actually quite good for the thief who is juggling lots of balls up in the air,

A trying to work out how she can hide a loss here and there. It is quite good to have £1240 to
stuff in a pouch somewhere. It is quite handy. It does not make any sense at all not to enter
it on to the system at the time the transaction takes place because if things are going wrong
you don't give up. You try and put them right. You follow the rules rigidly. You don't just
B give up and just say "well, I will just lose money for the rest of my life."

C You do what Mr Vasarmy does. Do you remember he was recalled to deal with
that call to the helpline, the voicemail call, and he was able to say straightaway – for
something that happened I think three years ago – he said "yes, I remember that. Somebody
had entered £2,000 instead of £1,000. We had to contact the customer. The customer came
D in and handed over another £1,000", as quick as a flash.

E Is he lying about that or is that simply an example of how a sub-postmaster should
work? If he has a problem he calls the helpline. If he finds a loss he finds out what the cause
of the loss is and he contacts the customer because at the end of the day it is his money.
F Why is he going to take risks with his money? Why would Mrs Misra do that? She was not
taking risks with her money. She was pouring it down the plughole. Her business was a
sieve. "Oh, let us put some more money in. Oh, dear, it has all come out again" – absolutely
absurd. Do you think anybody could run a business like that? Do you really buy that?

G It is a matter for you, but you have seen her business experience. Is she such a
complete idiot? I am not saying that to be rude to her. I am saying about her account
because in fact she is clearly an intelligent woman, no problem with English. It was clear
H from her evidence. She has read Jane Austen. At least that is on the syllabus for the English
degree in India at New Delhi University. So she is an intelligent woman, computer literate,
experienced in accounts, and she is incompetent – complete nonsense, isn't it? It is a matter

A for you to assess. You may disagree strongly with the points I am making but that is how the Crown puts the case.

B What do you think about the suggestion she was abandoned by her trainers? I asked her “do you feel abandoned by Junaid and Michael? They had seen these problems and just left you in the lurch?” “Yes, I did.” Do you believe that? Of course the trainers, as you know from the admission, when they were asked about events five years ago of course they are not going to remember what happened although you may think that if there was something wrong happening they would have remembered that. They would have thought C “oh, hang on. I remember that office. That was the office where there were the losses I could not explain.” They don’t remember. Do you really think those trainers though left her D in the lurch, given what Mr Bayfield said about them, how they are experienced trainers?

E There we are. Horizon you may think from what you have seen is meant to be easy to use. It uses plain English, nice coloured buttons, and Mrs Misra was trained. How could she run a post office for two years and seven months unless she could run a post office? She was able to find out about these thefts. That suggests that she could work her way around the system. She was able to cook the books nicely each month. That suggests F she knew exactly what she was doing.

G Can I just finally – and I am sorry to address you at length but it is meant to be helpful and I hope it is of some help – Mrs Misra’s account that she gave from the witness box, because the Crown say there were parts of that which were simply unbelievable. First of all though, did you find it frustrating listening to her yesterday afternoon because her H evidence when I was cross-examining her, maybe it is my fault, but it took a long time, partly at least because she would not answer a straight question. Did you notice that about her evidence, how she would come up with an answer that bore no obvious relation to the

A question at all? Why did she do that? Was she trying to help you or just trying to duck the
questions she didn't want to answer? Of course some people are nervous in the witness box
and of course Mrs Misra undoubtedly was. It must be absolutely awful to be sat in there first
B of all for a week, then to have to go over there. It must be an absolute nightmare, so you will
want to bear that in mind.

C But the Crown say she was not trying to help. She was trying to be obstructive in
her evidence. She fails to mention things in her interview, in her notes which were handed
over to Mr Noverre, and she mentions them at a late stage, one matter in particular only in
D the course of this trial. Why didn't she talk about Junaid and Michael and Timiko Springer
and the fact that the losses were accruing from the very beginning? Why didn't she mention
any of that in her post office interview? Was it because she had not made it up then, because
E you would have thought it would have been an obvious thing to mention. It has happened to
her. She is not a trainer who has to try and remember all the different offices they have been
to. She just has to remember what has happened to her, but she completely seems to forget
about that. It is not because she was not asked the question because she hands over some
F notes giving her account and she fails to mention any of those things on which she now
relies.

G The fact is it is easy to invent things five years later and it is quite a good trick if
you are a liar because there is a decent chance that the people who you are talking about will
not remember because of the length of time that has passed. That is why the Crown say
there are all these additions. That is why the Crown say there were changes in the defence
H statements.

Mr Hadrill may say look at the difference in all the detail in his solicitor's
statement and the previous one. That is right. There is a lot of detail in the second defence

A statement, although in fact the first defence statement does at least have the benefit of being fairly punchy and actually saying what the issue is fairly clearly. It is down to other people's thefts. Is it just the incompetence of the solicitor that leaves Mrs Misra in her own document which she has signed not to give the full details of her defence? If those details were right why didn't she mention them in her interview?

B She mentioned a little more in her disciplinary interview. She mentioned that the tills were always down and she talked about a £500 loss leading to a suspension. Why didn't she mention though in her post office interview that the auditor had threatened her "you will get the sack if you lose £500?" In fact that suggestion is rather silly because as you know the National Lottery correction notices, there is a £20,000 loss. She is not told "you are going to be suspended because you seem to have lost £20,000." You may think that it is just an invention, the auditor's threat. It is not the auditor's role to make threats at all. Their role is to go in there and check what stocks there are and compare it with the records. It is going way beyond their remit to give some sort of threat to Mrs Misra, and it is very odd that that threat is made and yet she is not suspended when she is down £20,000 and the Post Office knows all about it.

C D E F G But the really startling and unbelievable addition was Timiko Springer because you will see from that defence statement even there when she talks about Timiko Springer she does not say that she told Timiko Springer that her staff were stealing from her. That is what she told you. She said "I rang up my area manager saying that I have got thieves." Why didn't she ever mention that before until she was in the witness box yesterday?

H You will remember I cast out an open invitation, "any documents to show me, to show that it is not just an invention in the witness box?" The fact is if you think about it, what would happen if she had phoned up her area manager and said "I have got thieves in

A the office?” What do you think would happen? I think you can bet with an almost certainty
that the next day the auditors and investigators would be coming in. Do you think that
Timiko Springer would say “oh, that is nice?” Do you think that is how it works? It is
B complete garbage. It does not make any sense. Moreover she never mentioned it at all, never
gave any hint of it at all until she was in the witness box.

C So that is at rather tedious length I am afraid. I am sorry about that, but that is
how the Crown puts the case. Mr Hadrill will explain why that is wrong. You are going to
have to make up your own minds about the evidence. But the virtue of the jury system is
that you bring your experience of the world and your commonsense to prevail. It may be
D that commonsense was one aspect not at the forefront of Professor McLachlan’s approach,
but you can use your commonsense and you can use your experience of the world. If you
think there might be an innocent reason for all this false accounting then you will acquit the
defendant. If, on the other hand, you think what she is saying is garbage your verdict may
E go the other way. Thank you very much for listening.

JUDGE STEWART: Thank you.

DEFENCE CLOSING SPEECH:

F MR HADRILL: Members of the jury, it is now my opportunity to address you. If I can start
by saying this, that Mr Tatford who prosecutes, in his closing speech and his opening words
G were he would bring the pieces together, the threads together so that you could be sure. It is
always so easy with hindsight to say “I can create a picture because I know what the facts
are. I know why we are here and you can be confident” and it is the confidence he says that
H you can gain by reason of what he has presented, how you can actually ignore what has
been put before you on behalf of Mrs Misra and you can be confident and sure that the
Crown have made their case out of theft.

A He refers to “there is no evidence of this, no evidence of that” and it is as if he is reversing the burden of proof, as if it is for Mrs Misra to have to prove to you her innocence where in actual fact it is the Crown that bring the case and the Crown who have to prove it to a high standard.

B What would be useful would be independent documents, persons detached from the Post Office to be called on behalf of the Crown to confirm what they say. It is said “oh, well, you just look at this CV and it shows that she is a woman who has understanding and C knowledge.” Bearing in mind this CV would have been sent off in November 2004, nearly six years ago, it has been sitting in the Post Office file and produced for this trial. Mr D Tatford says “just simply look at the details on it. It shows that she knows what she is doing.” How difficult would it have been for the Post Office, for example, to contact the Bedfordshire Police in Bedford: “We understand from her CV that a lady called Seema E Misra worked for you from 2001, that is the September, to January 2002.” They could have done that last week, last month, last year, in 2008. “Can you tell us about her computer F experience? Can you tell us about her calculations in a complex matter?” and you would have had an independent person produced by the prosecution, a police authority, giving you an assessment. None of that has been done by the prosecution.

G Mrs Misra goes into the witness box. She didn’t have to. She gives her account of what happened, how little she knew, and the CV is thrown back at her as if she has got to disprove what is in the document, a sort of reverse burden of proof, and you may well have been greatly assisted by some independent evidence in certainly some documentary form H which predates 14th January 2008. There is none. We have asked. It does not exist. Training records, assessments, trainer reports – nothing, and you will have thought perhaps there should have been and certainly one of the criticisms made by Professor McLachlan, he

A would just like to have seen some assessment reports as to whether the prosecution can have
the confidence in which they maintain that Mrs Misra does understand fully that which she
is meant to understand. There is not a shred of documentary evidence to support the
B prosecution case, saying “oh, well, if they don’t understand they should say so and we will
give them a bit more training.”

C We also know that if a person, a prospective postmaster or mistress, says they
don’t understand, the chances of them being permitted to open up a post office which is
their ambition with a lot of expenditure will be refused. So you want some quality
D assurance, and the theme throughout this case from the Post Office there does not seem to
be any quality assurance whatsoever.

E So it is criticism for Mrs Misra about the CV and she has given her explanation.
She paid a company that creates CV’s to create this document before you, and she explained
to the interviewing person that she did two years of a degree in India, it was English
F Literature, discussions in Hindu, and everything else that goes with it. It is a matter for you
to decide. You have got nothing to say that she was giving some explanation which was far
and beyond that which she tells us today.

G So let us go back to November 2004 because Mrs Misra, wanting to open a post
office, we know that she was living and working in Luton. She had bought a shop, a
convenience store, corner shop, was running it, wanted to improve her business and life and
so she has ambition to open a post office in Surrey, West Byfleet.

H She applies to the Post Office in November 04 and on 31st January 05 she is
interviewed at Hounslow. She passes the interview. She has no knowledge or understanding
of Horizon. It is not suggested she does have any knowledge of the computer systems or the
Post Office system. She is to be trained, and duly she gets her two weeks training, half day a

A week for five days a week in Hampstead. But there are no written tests. She looks as though she understands. She is passed out, and there is no review at any stage.

B She waits. Three months go by. She finally gets the post office on 29th June 2005. No written reports, no assessments, no correction notices. She has one trainer and then another, and it is a question of knowing what standard she achieved, and we don't know. She tells you she thought she was quite good but was she gauging that again we don't know because we have got nobody experienced who understands what level should be achieved because there is no written assessment, no qualification to be taken.

C So whether she falls within the top parameters, at the bottom parameters of a pass mark we have got no way of telling. Her skill and abilities we have got no way of telling. D She starts the two weeks knowing, it has been drilled into her, that any losses it is down to her. She is solely responsible. So she employs counter staff and things really don't go too well because we know that come October 5th there is certainly £3,040 losses. She is E complaining that she is putting in money from the shop every day. She says that to Junaid and Michael and makes complaint to Miss Timiko Springer.

F But she has invested a lot of time and money. This is her ambition. She wants to be successful, and there is no suggestion that this woman was of impeccable character until she started to what the Crown say is cook the books. When she started the business she had G no intention to appear at Guildford Crown Court in October 2010. She had no intention of being suspended from the Post Office in January 2008. She had honest and good intentions and she was not investing £200,000 to throw it away.

H Monies are being lost. She is being told it will come good. It could take six months and she is trusting. October happens and it is clear that monies are being lost. She sets about trying to correct, to identify where the monies are being lost because they are

A

because we have got the audit, £3,000, over a very short period of time. So she separates the stock units, the tills from each other. The safe is a separate stock unit. That is A. The others were B, C and D, and so we go on.

B

So she is creating a problem without realising it because we know from Calendar Square that if you separate the stock units you start getting reconciliation problems.

C

Although Mr Tatford says it is just a red herring, what was happening is clearly identifiable at the time to Calendar Square as well because if you transferred money from one till to the other one till goes up, the double entry balance, the money does not go down, so it stays at the same figure, 6, 5, £4,000. At the end of the day you go to put your money in the safe.

D

The Horizon printout tells you there should be X amount but it has not taken out the £1,000 or £2,000 that had been transferred from one till to another. So in the till you have counted it. You have got £5,000 in money and at the end of the day the Horizon system tells you it should be 6 or £7,000. No-one has notified anybody of this problem that has been known.

E

September, October, November, December passed by because not even Horizon know what the problem is. There is a reconciliation problem but it is not known what is causing it.

F

March, it is not cured just in March. It is cured in the April, May possibly, and so go on until then and suddenly the reconciliation problems are stopped, but unless you happen to be an expert computer whizz or somebody who is dotting every I and crossing every T and making sure that you do your accounts at trading periods when they are meant to be and follow procedures you will not know. We don't know how many other post

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offices suffered that trouble and had to make up the monies themselves, but it starts from

H

the beginning. It is an inherent problem with the Horizon system from the beginning but that is put down as this lady as theft when she has done nothing wrong.

A It stops, whatever happens, at April, March, May 2006, this problem, and losses
have been significant. She has had to borrow from her sister in law, Omika. We know that
she is complaining about this because there are losses. It is clear. There are losses. We have
B got the evidence from the police involvement. Javed being sacked because there is a
difference between the till, what should have been in the till and what is now in the safe. He
is saying “I have done nothing wrong.” She is accusing him of theft – sacked. His sister in
C law, Nadia Badiwalia, similar problems. Were there thefts or not? There may well have
been. There may not have been. We don’t know, but it is quite clear from a very early stage
there are significant losses occurring and they accrue continuously.

D She tries to do her best, and you can turn back now and say “it is all very foolish
and foolhardy, anybody in their right mind. She knows she loses the post office. She has
accused people of theft. She does not know the Horizon system has got inherent problems”
and so she just assumes – she does not assume anything. She just makes good the loss,
E asking and caring about her business.

F So does she give it up within a matter of six or seven months and loses everything
as now has happened or does she persevere foolishly as she has done, a woman of good
character? There is no suggestion that she is a woman who was having a high life and
G spending thousands and thousands of pounds or seen to be spending large unaccounted
sums of money, whose bank balances have been investigated and should have been by the
Post Office because she gave them free access to her bank accounts and her house and her
finances. We have heard nobody say that this woman was being extravagant and spending
H money which we are all surprised that she had.

She was working every day of the week long hours trying to make the business
good, and it didn’t come good. Correction error notices are appearing. Money is being

A clawed back. Yes, she should have been like Mr Vasarmy perhaps, checking every penny,
going through the detail. She was trying to do the best she could, but incompetent best she
could, and it was getting worse, and we know that when the Post Office is audited on 14th
B January it is a very sorry state. The last trading periods have not been done. Money is left
out. The giro that should have been banked was not. Monies left in the tills which should
never have been there, nothing had been attempted to be reconciled. So it is a picture that is
C painted of total mismanagement by the post office and it is not as though they have walked
into a post office announcing they were going to come and everything was in its place
particularly cared for – a total mismanagement by her.

D So 2006 passes by with losses accruing, 2007, losses accruing. She is trying to do
the best she can to make good. It all comes to a head on 12th January 2008 and the
prosecution say it is theft. It is not as though she had not been suffering significant losses in
E the past because there had been Lottery problems and she is then told to account for £20,000
which she has not got and has to be settled centrally monthly. So it is not as if there has not
been problems. The prosecution case throughout show that there are problems.

F But what was £20,000 was a mistake suddenly becomes theft of £75,000. How do
we take that step forward? I don't know. It would seem to be that come October 06 the Post
Office were willing to accept there were problems because why was there not a prosecution
G in October 06? If there are problems in October 06 why was there not an audit? Why was
not care given and also to ensure that she was compliant and why was not care also taken to
ensure that she understood the systems and those that she was training herself understood
H what was going on, because Mr Bayfield, the regional manager, told us that if she didn't
understand the Horizon system it could lead to significant problems.

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There were no assessments carried out. She is allowed to continue as she was even though it is known that there are massive losses, and that is down to the Post Office. There is nothing to suggest that anybody raised any concerns whatsoever that she may be incompetent. So it continues through 2007. She is trying to make up as best she can the losses. She is acting honestly and genuinely. She wants to sell the business but cannot. She is caught. It is a vicious circle.

It is easy with hindsight now to say “oh, well, this must have been carefully planned and orchestrated.” Nothing of the sort. So she is arrested and she is interviewed. It had never happened to her before, and she gives answers as best she can. She does not ask for a solicitor. But what she tries to do at the time is to assist. In fact she is honest and open from the outset, says “yes, this is going to be down 50, £60,000.” She is not there to blame anybody else. She is responsible. She accepts that. It is a loss. She will try and make it good. She is suspended and then interviewed again in March, and then it is criticism time. Never having been interviewed or spoken to by a police officer in regard to the investigation, “why didn’t you mention that specific detail? Why didn’t you mention that other specific detail?”

We have the disciplinary hearing in the March, two months later, and she has raised a number of the issues which were not in her interview. Again she is unrepresented. So a year passes by until January of 2009 when she is charged, and so it is being criticism time against her that why didn’t she raise these matters? There is nothing to stop the Post Office going back and asking her some questions.

She is interviewed on 12th January 2008. She is asked to attend disciplinary proceedings in March 2008. She does and answers all the questions they have and raises the issue about £500. We are told that by the auditor. That is March 08. You would have thought it would not take too long for the Post Office to trot off, speak to the auditors of

A October 2005 and say “in this disciplinary hearing Mrs Misra says that it was said that if she has more than a £500 loss she is going to get suspended or could be suspended.” That is two and a half years ago – nothing.

B Matters which are raised could well have been spoken to again by the prosecution of Mrs Misra and if she had refused to speak to them or answer any questions you would have certainly heard about it. “She is hiding something. She refused to answer these questions.” Not a single step by the Crown, although it is criticism time of her for not C having raised these matters at the very first opportunity on 14th January 2008. You put what weight on that as you wish.

D Time passes by. She is charged. We have got the defence statement which was prepared, speedy action, and then we know that the trial was meant to take place in the May, June of last year and it was adjourned for her when she moved to different solicitors and E different representation. She gives an account which requires investigation and that is why you get the experts because as it stands without the experts we have a robust Horizon F computer system which has never been challenged and you can grasp it with both hands as being infallible. There are always losses. She must have stolen it.

G So this case is taken to a slightly different dimension because you start to look at the integrity of the computer system because there it is. It relies upon manual input, and whatever the figures are at the end of the day you are deemed to accept and if you don’t accept it you either lose your post office or you make up the difference, and so questions are H asked.

H But back in January 2008 Mrs Misra knew nothing about the problems that happened at Calendar Square, Falkirk because nobody had ever been given notice of that particular Horizon computing problem, but it is certainly comparable to what was the

A operating system in West Byfleet at the time. It is being said by Mr Tatford she should have
realised. She should have able to raise that problem as did the postmaster in Falkirk. We
B understand from Mr Jenkins it had probably been there for many years and nobody else had
discovered it, so why is she being criticised if she is fairly incompetent of not having
promoted this problem by reason of reconciliation deficiencies because if at the end of the
day they are saying she has got to make up a few hundred pounds or a few thousand pounds
she just accepts what the computer system says because that is the bible. It is infallible.

C So we have an alert, astute, very knowledgeable man in Scotland who sees
something wrong, and it is not as though it is going to be picked up and corrected overnight
D by Fujitsu or Chesterfield, the Post Office. It takes them months to sort it out themselves
and the problem persists.

E If it can happen there how many other possibilities are there with a computer
created reconciliation problem? Not manmade. Professor McLachlan raises his concerns
and explains to you that he would like his independent expert to have a number of
documents and original documents in regard to Calendar Square. They have not been given
F to him. Certainly three attachments that should have been to the summary are not there. Mr
Jenkins has not seen them either. He just relies upon what he has been told. Mr Jenkins
accepts what he has been told and after the event “you should have been looking for this,
G that because that is what the Fujitsu engineer says”, but the problem was not prevented by a
Fujitsu engineer because they didn’t know what to do and what the problem was.

H It then gets sent off to a third party contractor, Esher, who take many months to
resolve it, so we do not know from Esher whether what the Fujitsu engineer thought it was
was in fact the problem. They sent a patch to repair, and so all we rely upon is the
assumptions made by an engineer at Fujitsu who cannot resolve the problem, sends it off to

A Esher, who did take time to rectify it. We don't know if the same problem. Professor
McLachlan says "I would like to look at the basic material to see if what I am being told is
B right" because Mr Jenkins is willing to accept assurances from everybody. He based his
report upon Mr Dunks being an expert. He accepted everything that Mr Dunks said in
C regard to helpline calls which we now know is inaccurate. He is not an expert, and also in
regard to Mr Vasarmy who is saying that he had every confidence in the computer system
when he took it over "because there was never a problem I was never aware of a problem",
D although when we get those logs in his report there seem to have been a number of
significant computer failures and he has never had a reconciliation problem, but lo and
behold, there is revealed a reconciliation problem which takes time to resolve this error.

E So it was not as he first said on the first day problematic free, human error free. It
is slightly different. Be that as it may, but Mr Jenkins has certainly based and grasped for a
confidence factor in his report the assertions made by Mr Dunks and Mr Vasarmy. He starts
F to build his report on quicksand, especially if he has not had the benefit of the base
documents for Calendar Square and knew nothing about Calendar Square until March this
year, and he is the man who is central to the creation of this system. So if he is in the dark
G how many other people are in the dark and how many others are repairing problems with
this computer which isn't passed on to the department?

H Professor McLachlan says "I would like to have seen the peak reports for the
relevant period." None are available. Mr Jenkins says "they are archived. I have not looked
at them." What confidence do you have that you can adopt this infallible system that isn't
going to create reconciliation difficulties? The prosecution say you can be sure because the
defence have not raised specific failures. Professor McLachlan has not been given the
opportunity to investigate all.

A He raised in his report a hypothesis which was set out at the beginning, “you have
got to look at the post office back office systems, the manual input.” We have heard no
evidence in any shape or form about that part of the post office which is integral to this
B Horizon system working and serving for reconciliations. Mr Jenkins could have had the
opportunity. He didn’t, the reason being he was not asked to by the Post Office because he
works for Fujitsu, is under contract to the Post Office and he was never given the
C opportunity. So we have this void. We don’t know what happens. Professor McLachlan has
asked but he has not got anywhere further.

D So how much confidence can you have in the assertions made by Mr Jenkins and
Mr Tatford in his speech that really you don’t have to worry about the Horizon system? But
what is a worry is this, that it has failed and proved to have failed at the relevant period and
how many other failures are there that we have not been told about? If you need correction
E errors, reports, transactions, it shows that there must be errors inherent manually or by
whatever form whatsoever in a system, otherwise why do you do to correct?

F A failing of this computer system, the hard copy documents. Professor
McLachlan said to you it is really analogous to a mini-bank, and that was accepted by Mr
Bayfield. He says it is really a banking services business. That has got a significant turnover
for the twelve, thirteen months December 06 to December 07, but the safeguards you expect
G for a teller in a bank are absent in the sub-post office. You don’t get hard copy printouts to
assist the cashier, the teller. You just press the button at the end of the day, hoping and
expecting because that is what you have been told the computer system will give you the
H answer. It is all singing, all dancing, and it does not.

A So where does that take you in regard to the confidence factor bearing in mind the prosecution bring this case and the prosecution have to prove it, that this lady stole significant sums of money?

B Another hypothesis raised by Professor McLachlan was training. We have been through that. We have been through a number of issues raised by him and some Professor McLachlan has accepted. The foreign exchange, no longer to be pursued. He said “the screen layout, it looks okay”, but Mr Jenkins then read out a number of contract criteria set C by the Post Office of Fujitsu and he turns round and says “it is being met. Although there is no certification it is being met”, although we know from Mr Vasarmy errors do occur on it, £2,000.

D We get calibration problems and this machine, looking at the telephone calls, suffered calibration problems. Where does it take you? A total blank of evidence, but the blame is put upon this defendant that she must have stolen the monies and that is why she is E on trial.

F So do you accept that she must have the high standard of confidence and competence the Crown say she has because you have to take it for granted? If the Crown Prosecution say she has you can take it from them that they have met the standard required of them although you have got nothing, as I say, in independent form to confirm that.

G The computer records are only available from December 06 to December 07, so we are looking at an extract which has been provided by the prosecution. You would have thought it may have been useful to have had the full set of data facts from June 05 to 18th H January 08 and from a very limited extract the prosecution say “we have got Mr Jenkins to do some calculations and we can see the figures are going up. Although Mr Jenkins accepts it is really an extract he is relying upon he cannot give an overview or picture of what was

A happening.” He does not know, he has not got all the till markings, the Lottery, the extra
B spare safe. He has just taken four stock units instead of six. He has made assumptions. That
C is a frightening thing because to make assumptions when you have to have a confidence
D factor to be sure you could be wrong, and he accepts that he could be wrong but does not
E think he is wrong. We have got nothing independent to confirm he is right.

But the Crown say “take what he told you as being correct” which again is unfair
for Mrs Misra. Professor McLachlan says you cannot just do it like that. If you look at the
bar chart, the chart seems to lump lots of things together. There has been no doubt proper
breakdown. Mr Jenkins says “I accept that. I have not done a detailed analysis.” It is just a
rough and ready job he has prepared. This is a lady who is on trial for a serious crime. Being
tried in the crown court you would not necessarily expect having regard to a twelve month
loss which does, meaningless in itself, to be a rough and ready calculation. You would think
you would want a little bit more certainty.

So does that take you to have confidence in the prosecution case? A matter for
you. The defendant was arrested. As we know, the place was a shambles. Does that help you
to accept that in fact that she was or may be – it only has to be a maybe for the defence –
incompetent, operating under mismanagement? If she didn’t understand what she was doing
how was she going to impart information to various cashiers and clerks who were employed
to help her?

One chart Professor McLachlan created was called a discrepancies chart. It is at
page 123 and it is just for a limited period of time that she has the data form. It says if you
look at that it shows that there are days where there are massive surpluses, other days where
there are massive negative quantities, and just to look at that dot chart it shows that there is
mismanagement, and the information would be available to the Post Office.

A We have heard from Mr Jenkins that that information would be available to the
Post Office but the Post Office never asked for it. So although Fujitsu have pulled it off for
the purposes of this case, because it is the December 06 to December 07 material, that could
B be so easily given to the Post Office monthly or quarterly for them to carry out general
reviews on an official inspection to see if those things are wrong. I asked Mr Jenkins, the
prosecution expert, does that show mismanagement? He said it does. It is fairly obvious,
C although that was criticised by my learned friend Mr Tatford who said “my witness does not
have the experience or expertise to say such a thing.”

D I put the same questions to Professor McLachlan who does have a wealth of
experience in banking in a complete breadth of computer analysis, programming, training,
supervision, organising both nationally and internationally, says it is an obvious picture of
mismanagement which clearly on the computer printout runs from December 06 to
E December 07 and when the auditor, Mr Noverre, goes in on 12th January 08 the picture
continues visually. He can see. It is not following any procedures.

F So the information is available certainly for the whole of 2007 on the computer
printout we have been given, information is mismanagement. So why is it theft? Mrs Misra
gives evidence and says “I never had the manuals” – never been challenged. “The operation
G manuals in the post office were never there and I kept asking for them. I am not dishonest”
and that is the sole issue you have to decide whether she is dishonest. She says “I have
raised all these matters from the very outset.” The prosecution say that you can ignore. That
is not the burden and standard of proof. It is for the prosecution to prove.

H She has set it out in some detail. She has set it out in her interview back in
January 08, again in her disciplinary interview in March 08 and again in a very detailed
defence statement in January this year. She just has to alert the prosecution so effectively

A they are not ambushed or taken by surprise. They have not been taken by surprise or
ambushed in any shape or form. All the evidence is in their control. All the persons are
employees on their contractual duties. She stands alone.

B She has given evidence. She didn't have to do that. She could have sat there and
said nothing and let the prosecution prove it, and now when she has given evidence to
justify her incompetence it is levelled against her because she didn't say this, she should
C have said that. She took a long time to answer this. You make your own decisions as to
whether she was trying to assist and tell the truth or whether she was being deliberately
misleading.

D What she said is this. "Yes, I accept I cooked the books as you wish to put it. I put
false figures in. I didn't want to lose my post office. I didn't know where the monies were
going. I made assumptions of theft which may or may not be right. I made assumptions that
E I now accept incompetent", but she has never been assessed as to her skills and abilities,
"and there may well have been computer problems. I just don't know, but I was not stealing
anything."

F The prosecution turn round and say "oh, well, nothing has been produced to
confirm that." She is not in a position to do that. She is not the expert. She does not have an
acute clinical understanding.

G Before I sit down and close, because it is often analogous that with hindsight the
Crown stand up and say "I will paint a picture of what we say happened. This woman is
dishonest." You sometimes find a situation of the mother is charged with manslaughter of a
H baby. I say that for this particular reason, that a cot death occurs and sometimes lightning
does not strike twice, and so the mother suffers two fateful cot deaths and so she is
prosecuted for smothering the child. The Crown would say "you will hear from all sorts of

A experts that on the autopsy nothing was found and if you can take the confidence of the doctors, the consultants, that nothing was wrong with the body” and so a conviction follows.

B You then find many, many years later papers have been written by hospitals, college hospitals. Viruses are found. In actual fact there is a deficiency in the immunity system, and what was said by doctors then is proved many years to come to be inaccurate, because, as doctors say, “you never say never” because we do not have a full understanding of the human body.

C Certainly in this computer system we do not have a full understanding of its workings and failures. We have not had the opportunity. So you can have a similar situation in human life as well as in a computer system which is alleging fraud in my submission. D Recently there was an opening of the investigation in Australia where a woman 30 years ago was alleging her daughter had been taken and killed by a dingo. She was convicted. E Many years later similar things happened. She was acquitted. It is only with the passage of time and that is why you have to be sure.

F So we have put before you the experience of Professor McLachlan who says “I have troubles with this computer system. I have not had the benefit of examining it as best I can and I can’t have the confidence that you can accept what Mr Jenkins says is right.” So if there is a problem with this computer system with regard to reconciliation, a world apart from a mother losing her son and daughter, you have to be very cautious.

G What I submit is that when you look at all the evidence, you look at the independent evidence that is available to you, you cannot have the confidence which the H prosecution say you can be sure of that this woman stole all those monies over that lengthy period of time or have the confidence in the proposed CV that she has explained how it came about.

A JUDGE STEWART: Yes. Thank you very much. 2 o'clock.

(Adjourned for a short time)

S U M M I N G U P

B JUDGE STEWART: Members of the jury, as you very well know now, Seema Misra was
the sub-postmistress at the West Byfleet post office between June 2005 and 14th January
2008. On that last day she was suspended, and the post office was within a convenience
shop which she and her husband ran.

C On that 14th January 2008 Post Office auditors arrived unannounced to conduct an
audit. Mrs Misra was not there when they arrived. She came a little later and immediately
D told Mr Noverre, the auditor, that there would be a shortfall of about 50 to £60,000 in the
post office. She said then that one or more members of staff had stolen about £89,000 about
a year or so previously and that since that time she had been trying to make good the deficit
and in the meantime she had been falsifying her accounts to make it look as though the
E books balanced when in fact the shortage found on the accounts on 14th January turned out
to be about £75,000.

F Mrs Misra said that she had told nobody in the Post Office system about all this
because she was worried that it would disclose incompetence on her part and the branch
would be closed with unfortunate consequences for her.

G Later that same day she was formally interviewed and, as you know, she
reiterated what she had said about the staff. She was asked whether she had taken the money
and she emphatically said that she had not. In due course she was charged with stealing the
£75,000 odd and also with a number of offences of false accounting relating to the false
H returns she had produced at various times. The legal process led to her being arraigned here
at the crown court and she pleaded not guilty to the charge of theft but guilty to each of the

A offences of false accounting. The prosecution did not regard those guilty pleas as sufficient
so there had to be a trial on the remaining count of theft. A date was fixed for the trial, but
on the day when the trial was due to begin Mrs Misra raised the issue of whether the
B Horizon computer system which the Post Office use was reliable. An application was made
to adjourn the trial and it was granted.

C In due course a computer expert, Professor McLachlan, was commissioned by the
solicitors representing Mrs Misra to examine the Horizon system. In turn Gareth Jenkins, a
computer boffin if I can use that word from Fujitsu, the manufacturers of the Horizon
system, was detailed to provide what turned out to be very large quantities of information to
D Professor McLachlan. Voluminous reports and documents were exchanged, and finally the
process has culminated in this trial.

E During the course of the trial the prosecution and the defence have placed
evidence before you and the final stage will be your announcement of your verdict on the
count of theft. You have heard all that evidence. You have observed it with diligence. There
will be no more evidence now. You have listened this morning to the closing addresses by
F the two barristers and now, this afternoon, you have to listen to the summing up and you
might be forgiven after all that if you asked what is the point of a summing up?

G There are really two aspects to that, and the reason for that is that you as the jury
and I as the judge have very different functions to perform in the trial. I, among other
responsibilities, have to deal with questions relating to the law and at this stage I will give
you directions as to the law which is relevant in this trial and you are required to accept and
H follow what I say about the law.

Then I am called on to remind you of what seem to me to be the prominent
features of the evidence, but it is your function to judge the evidence. It is your function to

A will do that.

B You are not required to reach, certainly not required to announce a decision about
C each and every question of fact that has arisen. You will decide how important any
D particular topic or part of the evidence is. You will weigh it all up. You will decide what
E you regard as persuasive and what you regard as not and ultimately you will decide and
F announce one issue, whether or not the prosecution have proved that Mrs Misra is guilty of
G this offence of theft.

D So I speak of your judging the evidence. The evidence essentially is what you
E were told by witnesses who went into the witness box, took an oath or affirmed and gave
F answers to questions. Alternatively evidence may take the form of the reading of a
G statement made by a witness. You have that. It could take the form of agreed facts – you just
H heard some more this morning – and it can take the form of things, material exhibited by a
I witness’s evidence which becomes evidence in turn. So all those documents that you have
J seen are part of the evidence in the case.

F That is essentially what the evidence is. Evidence does not come to you from the
G lawyers. Of course the barristers ask questions during the course of eliciting the evidence
H from the witnesses but it is the witness’s answer that is the evidence although of course you
I need to know what the question was in order to provide a context for the answer. So when
J you are assessing the evidence you are also assessing the witnesses that you have seen and
K you are forming a judgment about not only what they have said but the way they said it,
L deciding whether something that was said to you was reliable or whether it was not, whether
M it was truthful or whether it was not.

A If there are discrepancies or inconsistencies you decide how important they are. If
a witness is wrong, mistaken or even untruthful about one part of his or her evidence does it
follow that you decide you cannot rely on anything that witness told you or alternatively is it
B the case that despite one part of the evidence not being reliable other parts of that witness's
evidence can be relied on? That is simply an example of the sort of judgment you may find
yourself considering.

C Of course Mrs Misra herself gave evidence. She is a witness in the trial and an
additional witness was called as part of her case and you must judge all that evidence by
applying precisely the same fair standards that you apply to the other evidence in the trial.
D You decide the case on the evidence that you have heard and you must not speculate about
what evidence there might have been from people who have not been called as witnesses.

E So it also follows from what I am saying that the closing speeches this morning
were not evidence in the trial. What they were were an opportunity for Mr Tatford and Mr
Hadrill to put forward comments and thoughts about the evidence which you can think
about and consider, and so you will take account of what you were hearing this morning, but
F ultimately it is your judgment as to whether you agree or disagree with any of the points that
were made.

G By the same token, if you think you can detect some opinion that I might have
about any part of the evidence, that is not evidence, my opinion, if I have one and you can
ignore it. When I refer to the evidence I will be selective. I am not going to set out to read
out every word that you have heard, heaven forbid. If I miss out something which you
H remember and which you think was important then that is your judgment. If I mention or
seem to stress something in the evidence which you think is unimportant my mentioning it
does not make it any more important. It is your judgment that matters.

A You may have thought to yourself – I don't know whether you did or not – but
you could have thought to yourself “how am I qualified to decide the guilt or otherwise of a
defendant? I have no legal training.” I don't know whether any of you have or not but you
B might be thinking that. Really it is quite the reverse. The fact that you have no legal training
or not expected to have any legal training is part of the reason for selecting members of the
public at random to form a jury to try another member of the public. You bring not formal
C legal training but experience and commonsense and you need not be diffident or nervous
about your capacity to perform the task that has been assigned to you.

So that is an explanation of why there are two parts to the summing up, the directions in law
and then a reminder of the evidence.

D The first direction that I am going to give you, it is something you have been told
already but it is fundamental, it applies throughout the trial and every summing up must
E contain this direction. The prosecution have brought this case against Mrs Misra and you
will find her guilty of theft only if the prosecution have proved that she is guilty of it. A
defendant such as Mrs Misra does not have to prove her innocence. Indeed she does not
F have to prove anything at all.

G How, one might ask, does a prosecution succeed in proving a defendant's guilt on
a charge? The answer to that question is this, by making you, the jury, sure of it. Making
you sure of a defendant's guilt is the same thing as in perhaps the more old fashioned phrase
satisfying you of her guilt beyond reasonable doubt. So I can summarise it. If at the end of
your deliberations you are not sure that Mrs Misra is guilty of this offence of theft then your
H verdict will consist of two words, “not guilty.” If you are sure of her guilt then your verdict
will consist of one word, “guilty.”

A While I am speaking of verdicts may I stress that at this stage I am talking about a
verdict on which all twelve of you agree. You have heard of majority verdicts but please
forget about them and when you retire seek to reach a unanimous verdict. If the
B circumstances should ever arise in which anything other than a unanimous verdict could be
accepted you would have to be brought back into court to be given further directions, and
those circumstances may never arise, and that is why I say forget about majority verdicts.

C Next, the indictment, the charge. You have got a copy of the indictment. Could
you please find it amongst all the papers that you have been given? It begins with the word
“indictment” at the middle at the top. It is probably the first thing that was handed out to
D you right when Mr Tatford began last week. We share one between three on the front row.
Is everybody able to look at it?

E As you know, you have got the full indictment including the counts of false
accounting, counts 2 to 7, to which Mrs Misra pleaded guilty, so there is no verdict required
from you. She has admitted her guilt on that. The count on which your verdict is going to be
F sought is count 1 there on the first page, and you see that a count in an indictment has to be
set out in two parts, the first called “the statement of offence” which simply gives the title of
the offence and the legislation where it is enacted, and then “the particulars of offence” set
out some more detail so that it is apparent what is the offence that is charged.

G The offence that is charged here is an allegation that Mrs Misra during that period
that she was the sub-postmistress from June 05 to January 08 stole £74,600 odd belonging
to Post Office Ltd. You see that the word is “theft” at one point and “stole” at the other.
H They both come to the same thing.

You don’t need to make a note of this, but let me read out so that you know what
it is, the legal definition in that Theft Act 1968 of theft. It is this. A person is guilty of theft

A if she dishonestly appropriates property belonging to another with the intention of
permanently depriving the other of it. It is a rather wordy definition because it has to cater
for a variety of different circumstances, but if I can put it in simple terms which I hope will
B be sufficient for this trial, it is dishonestly taking somebody else's property intending that
they should not get it back.

C The prosecution case is that Mrs Misra took money from the West Byfleet post
office, not for the post office's purposes but for her own purposes, and that inevitably if she
did that she was acting dishonestly. The prosecution say that is the reason why there was a
shortfall in the tills when the audit took place, and that is the issue in the trial, as you know.

D Her case is that she didn't take money that belonged to the Post Office at all.
There was a shortfall apparent on the tills at the time of the audit, she tells you, but the
cause of that was not her taking the money. She thinks it was staff theft, problems with the
E computer system and general just problems of coping with the demands of running the post
office leading to disorganisation and incompetence. That is what the defence case is. So that
is the issue in the trial, have the prosecution proved that Mrs Misra took the money for her
own purposes? If she did so, inevitably no doubt you would find it was dishonest.

F The prosecution are not required to prove that she took exactly that sum that is set
out in the indictment. As a matter of strict law it would be sufficient for the prosecution to
prove that she stole a penny during that period, but in reality in this trial you would not
G convict her unless you are sure that she stole a significant part of that figure at least. If you
do convict her on that basis again your verdict would simply be the single word "guilty."
You don't have to specify how much you decide she stole.

H If she took money from the post office dishonestly for her own purposes but
hoped in time to be in a position to replace the money that would be no defence to the

A charge of theft. She would be nonetheless guilty of theft of the money. So that is what the offence of theft is.

B There has been a great deal of time spent on the question of whether the Horizon system is sound or robust. Ultimately you will decide how important all that evidence was. Of course it depends on human inputting of figures at times and that can be a source of error. There was that specific problem identified at Calendar Square in Falkirk. You will decide whether that is or is not relevant to the question of the shortfall at West Byfleet. C Ultimately the prosecution must make you sure that the reason for the shortfall in the accounts was not simply computer error or operator error but it was, substantially at any rate, the result of theft from the branch.

D However, if you are sure that the shortfall of cash at West Byfleet during that period was the result of theft that is not the end of it. The prosecution must make you sure not just that the money was missing and not just sure that it was missing because it had been E stolen but also they must make you sure that it was stolen by Seema Misra, wholly or to a substantial degree. She told you that the previous staff had taken about £89,000 but the losses continued after they were sacked in early 2006. Be that as it may, the prosecution F must make you sure that it was Mrs Misra who took, stole at least a significant part of that missing money.

G There is no direct evidence of her taking any money. The prosecution have not called an eye witness to come and say "I saw her take a bundle of notes out of the till." There is no question of any confession by her of stealing. She adamantly denies stealing. There is no CCTV evidence. There are no fingerprints or marked bank notes or anything of H that kind. There is no evidence of her accumulating cash anywhere else or spending large

A sums of money or paying off debts, no evidence about her bank accounts at all. Nothing incriminating was found when her home was searched.

B In the absence of that kind of evidence what the prosecution do is ask you to draw what the lawyers call an inference from all the circumstances or to reach a sensible conclusion perhaps might be another way of putting it from all the circumstances. The prosecution say that there must have been a reason for her to falsify the accounts for so long. They suggest that the explanation she has put forward that she was worried about C losing the post office even though the losses were not caused by her is not credible and they say you can reject that explanation as untrue, and they go on to say that the only sensible reason there can have been for her to falsify the accounts was to cover up thefts that she had D committed.

E All those are points which the prosecution are entitled to make and you will consider them, but before you can convict Mrs Misra of theft in the absence of direct evidence you must be sure that the prosecution are correct in the arguments they put forward and that any other explanation that may be put forward for the circumstances can and must be excluded. I remind you, it is for the prosecution to prove their case and the F defendant does not have to prove anything.

G Now I turn to another topic and another direction that I must give you and that is on the topic of expert evidence. You have heard of course from two experienced and highly qualified computer experts, Gareth Jenkins and Charles McLachlan. Of course neither of them was present at West Byfleet during the period that you are considering. Neither of H them had anything to do with this case until the legal proceedings had been underway for quite a long time. Neither of them has ever worked at a post office and neither can tell you whether Mrs Misra is guilty of theft or not. The crucial issue on this indictment, as I say, is

A
whether she took money from the post office and you will have to form your judgment
about that.

B
C
D
But what Mr Jenkins and Professor McLachlan can do is assist you with technical
matters about which they are experts and we are not or at any rate are not expected to be.
Once again just as I don't know if any of you have legal training, I don't know whether any
of you have particular computer expertise but we have to proceed on the assumption that
you will not all have the level of experience and skill that those two witnesses had. So they
provide you with their assessment, their judgment based on the material that is available to
them and their expertise, but ultimately you have to evaluate expert evidence in just the
same way that you would evaluate the evidence of any other witness. It is ultimately trial by
jury, not trial by expert.

E
F
So when you are considering the evidence of those two gentlemen you must, just
as you would with any other witness, examine it for its strengths and its weaknesses. You
will bear in mind that the experts are dealing with part of the case as a whole but you are
considering all the evidence and it is on all the evidence that you will make your final
decision.

G
You heard a number of times that the two experts have come to an agreement or
to no significant difference of opinion about one topic or another and in those circumstances
you will no doubt be inclined to accept what they both say, although as a matter of law you
are not bound to do so if you see good reason in the evidence to reject what they say in
those circumstances.

H
If the experts disagree then judging the competing views is a matter for you.
Experts should not come here to argue the case for one side or another but they should try to
assist you to understand how they have reached the opinions they have expressed. Mr

A Jenkins is an employee of Fujitsu and you will recall at the conclusion of his evidence I
ventured to enquire as to whether he understood that he had to be impartial and I asked him
whether there is any possibility of his evidence being affected by the position that he is in,
B but he insisted that that is not the position, and you saw him. You can form a judgment
about that. Professor McLachlan is being retained by the defence but apart from that of
course he has no connection with anybody involved in this trial. You may think he is truly
C independent.

So you will take all that into account. You will consider their respective expertise.
I can summarise it, can I not, that each of them is in his own different way, his own different
D career path, thoroughly experienced and skilled in many aspects of computer technology
and its applications, Professor McLachlan perhaps a wider spread of experience because he
has not been with one organisation so consistently as Mr Jenkins, but Professor McLachlan
E you may think took pains to acknowledge the level of skill and helpfulness that Mr Jenkins
has displayed.

You will also of course take account of the quality of the material upon which the
F experts base their conclusions and perhaps it is to that topic that most of the disagreement
relates because Mr Jenkins expresses the view that he has seen nothing to cause him to
question in general terms the robustness and reliability of the Horizon system. Professor
G McLachlan takes the view that he has not seen enough material to allow him to form a
certain or concluded view on a number of topics.

H If after you have given careful consideration to the evidence of an expert you do
not accept his opinion then you don't act on it. The weight or significance that you attach to
any expert opinion or evidence is something that you decide in your function as the jury.

A Professor McLachlan, as I have mentioned, has told you that in his opinion the possibility of user error or malfunction of the whole system could not be ruled out. He said more than once that whilst he had found no evidence of a possible or a hypothetical problem that he has proposed he had not seen enough underlying material to say that he was B completely satisfied that the problem had not existed.

C You have heard that he was supplied with an enormous quantity of data relating to hundreds of thousands of transactions but he felt he needed more. He felt he needed material not just from the Horizon and the Post Office but from all the other sources of material outside them that are set out in that architecture diagram that you have seen in the bundle of the report annexes of Professor McLachlan. D

E He was sometimes not prepared to accept a proposition unless he himself had seen and tested the underlying material. For example, in relation to staff training, although there is evidence from Mr Bayfield about the procedure for training, Professor McLachlan felt that before he ventured an opinion about the adequacy of Mrs Misra's training and her understanding he would want to see an independent evaluation of the training procedures and a record of how well Mrs Misra performed in training. The prosecution case is that you F may think that he is being unnecessarily purist about this and perhaps going beyond what as a matter of commonsense is necessary. You will judge that.

G You remember that I asked Professor McLachlan at one point how far things had to go and you will remember his answer. What I had in mind was, for example, if you had an assessment of Mrs Misra's performance in her training would that be enough or would you have to have an assessment of the validity of the assessment process and how H competent the assessors were? Where does it end? It is for you to judge.

A Do you accept the prosecution case that there is ample evidence before you to
establish that Horizon is a tried and tested system in use at thousands of post offices for
several years, fundamentally robust and reliable, or do you agree with the defence that
B unless someone independent like Professor McLachlan has the opportunity to perform a
complete audit of the whole system with access to any underlying material that he feels it is
necessary to examine then you cannot be sure that Horizon is sufficiently reliable to base a
C decision on its product in something as important as a criminal trial?

In relation to the Calendar Square issue the prosecution say it is really a red
D herring. Mr Jenkins said that he had looked at all the system event logs for West Byfleet
during the relevant period and he had found no evidence that the branch at West Byfleet had
suffered the Calendar Square problem, and they say Mrs Misra never suggested that that
E particular symptom, the problem with transferring cash from one till to another, ever
affected her branch. However, Professor McLachlan was not prepared to accept the reported
diagnosis of the problem in that peak event report that you have seen without sight of the
underlying data on which the engineer's diagnosis was based.

F There are just some examples of the sort of issue that may arise in your
deliberations. If you come to the conclusion that sometimes Professor McLachlan did have
an overly purist approach, that would be for you to take into consideration. If, on the other
G hand, you decide he is absolutely right to be careful and meticulous in his approach that
equally would be a valid conclusion.

H If you do decide that he has been unduly hampered by not being given access to
material that he needed to see then you should take that into account. If you decide that as a
consequence Mrs Misra has been placed at an unfair disadvantage in this trial then that too

A is something which you should take into account when deciding whether the prosecution
have proved their case against her.

B There will be a little more I need to say on topics of law in due course, but I am
going to turn to the evidence now. As I say, I am not going to go through every word and
indeed a lot of it is there in documents that you have and it does not need me to go through
it again. You have Mrs Misra's CV. You will recall the questions she was asked. Perhaps
C there will be many a CV which puts the best gloss or interpretation on a person's experience
and skills, but a CV you may think should be a reasonable indication of a person's abilities.
So is this a guide to you to test the competence in general terms of Mrs Misra as to whether
D Mrs Misra, "computer literate" says the CV, "strong administrative, management, retailing
and accounting skills" and so on, or is it just the case in some instances that what has been
quoted here is what the job description was and she didn't really have to perform quite the
level of difficult work that might be thought? You will form your judgment on that, taking
E account of what she said in evidence, the way she said it generally, what you know about
her capacities.

F You know that on the day that she took over at West Byfleet an audit was
performed and there was a deficiency left over from the previous postmaster of £1.88 which
was made good and so she started on that day with a balancing account.

G Then you heard the evidence of Mr Noverre about the visit on 14th January and he
was relying on his own note as to that and it is part of your jury bundle starting at page 7
and page 8 includes an account of what Mrs Misra said when she arrived about the 50 to
H £60,000 shortage, the £89,000 stolen from the staff and the adjustment as it is called to
show a clear trading position at the end of each period. There is no need for me to read out
that in any further detail.

A This report also sets out the results of the snapshot that was obtained that day, the
bringing up to date of part of the accounting periods and what was missing from the various
tills and the cash pouches made up with a slip to indicate respectively £14,000 and £13,000
B in cash in those two pouches but which were empty. So taking all that together and making
allowance for the outstanding repayment of a shortfall which had arisen previously you will
remember which she had been paying off in instalments, that is how the final figure of
C £74,609.84 that is set out in count 1 was established.

D In the main safe was the main shortfall, £37,000 there, and when you add that to
the missing money from the two pouches and the foreign exchange which was supposedly
in a pouch but which Mr Noverre said he could not find although Mrs Misra says it was
there albeit empty, that is how the figure is reached, it may be that you will decide that that
other foreign exchange pouch is not the most important part of evidence in the trial, nor
E indeed the £1,240 that was lying in the post office having been brought in by a customer the
preceding Saturday but not processed.

F Mr Vasarmy, the subsequent postmaster, who took over on 14th January when
Mrs Misra was suspended, told you that so far as he was concerned there were no problems
with the Horizon system at West Byfleet. He worked there for a couple of years from that
time until presumably earlier this year. The first time he came he told you that there were no
G problems at all.

H Later he had to come back to be asked about some of the records in the log of
calls to the helpline that you heard about and he agreed that there were some instances there,
but he said these were not as far as he was concerned serious problems. There was an error
of a thousand pounds at one point and he was able to tell you about what that was with a
wrong entry on the screen which was corrected having been identified when the customer

A returned. So once again Mr Tatford invites you to conclude if the previous postmaster
managed to end with just a £1.88 shortfall and the following postmaster Mr Vasarmy
thought everything was all right and didn't have any major problems, is it credible that the
B system went so wrong when Mrs Misra was in charge as to cause the sort of shortfall that
was the end result? That is for you to decide.

C Of course the staff problem that she had, according to her evidence, was during
her time, not during the time of those other two postmasters, and the Calendar Square
problem came to light during her period, albeit it is Professor McLachlan's evidence that for
all anybody knows it could have been happening at a number of post offices for some time
D before it was discovered and identified and according to the evidence corrected in 2005
through to the spring of 2006.

E Following the audit Mrs Misra on 14th January was interviewed and you have the
advantage of having the transcript of that interview as part of your bundle. As you know,
she provided the two written documents at pages 13 to 14 and 15 in your bundle, one
written by her, one by her husband. Once again it refers to the £89,000 and that she had
F been bringing it down and had got down to £60,000 and she wanted to make arrangements
to clear the balance, the loss being carried forward since over a year. She mentioned some
particular points including at the bottom of page 13 money transferred to AA was shorter
G than actually money transferred over.

H Then the transcript of the interview starts at page 20 and she spoke about on page
21, 4,000 euro missing. Money transferred to the ATM was actually shorter than the actual
money transferred over. Lottery money was taken from the shop and never entered on
Horizon. Even on the shop side she said the tills were low. That is not down presumably to
Horizon.

A “They refuses to pay” she said after something inaudible. “We kept quiet and
didn’t want to lose the post office.” Then there was further discussion. On page 22 she said
that since 2006 they had received further transaction corrections relating to them, no further
B large unexplained discrepancies. She spoke about the combined till and then changing it to
individual tills. You recall you heard evidence about that and paying back the Lottery error.
She admitted the false entries in the various monthly trading accounts.

C Then in the second interview at page 27 just a short time later it was put to her
very plainly “was it you that stole that £89,000?” Answer: “No.” “Have you ever stolen any
money from the post office?” “No, not a single penny. I haven’t taken a single penny out. I
D wanted to rectify this. I wanted to clear this up. I know I have done a bad thing but in that
situation I had to do it to clear my business.” You heard that she was upset at the time of the
interviews.

E What about the training that she had received? Professor McLachlan is quite right.
You have not seen any actual document recording her training. What you heard was Mr
F Bayfield telling you about the procedure that the Post Office have in place for training new
recruits as postmasters or mistresses and everybody gets a week and then two weeks if
necessary onsite assistance from another trainer. You heard about the procedure of the
week’s training with the mock up tills, the trainees having to perform actions, and they are
G given extra help if needed. He told you that the operations manuals are their bible and
should always be at a branch. People are dissuaded from doing things differently because
that is all a question of compliance.

H He told you that one of the first things they do in training is stress the
responsibility for training staff and doing regular snapshots to keep a handle on how the
branch is doing at any particular time. If there are any difficulties, he told you, then the sub-

A postmasters can bring staff to the trainers, Mr Bayfield and his colleagues, for further training. But the sub-postmasters or mistresses ultimately are responsible by contract for their branch and its performance. The trainers onsite, he told you, can stay on if they don't think the sub-postmaster or mistress is competent.

B You know there is an issue here as to how well Mrs Misra understood her training, to what degree she was able to cope with it all and what happened during those first two weeks when Junaid and Michael were the onsite trainers. You have just heard a C short time ago that when somebody went and asked them if they could remember anything about it they could not.

D But, say the prosecution, that is not crucial because there is no reason to suppose that Mrs Misra would not have been given the standard assistance and there is no suggestion that she ever complained that she didn't fully understand. The defence say you have her E evidence that she didn't fully understand it and she could not understand how some of the shortages that occurred came about and you have heard evidence of mismanagement on one level or another, the numerous occasions on which a check was made of the till against what F should be there, the discrepancies, and you have seen the chart that Professor McLachlan drew up – it is page 123 of your report but don't look at it now – showing by a series of dots G the various discrepancies that came up at various times. Of course it appears that there were occasions when a cashier may have done a check, found a discrepancy and then checked again and done another check and sorted things out and got a lower figure for the H discrepancy, but you will recall what Professor McLachlan said about it, that he thought that the level of these discrepancies was an indication of something wrong, of mismanagement if nothing else. When you look at that chart it may strike you that the figures are sometimes

A above the line and sometimes below the line, over figures or under figures. To what extent it is significant will be for you to decide.

B Mr Bayfield also was asked about error corrections, transaction corrections via the NBSC, the National Business Support Centre, and Chesterfield and those would be issued saying “there is something wrong. You need to put in” or “you are over by a certain amount” and the postmaster or mistress would then have the option of accepting that and putting in money if she was said to be short or demanding evidence to support it and all that C process could take a considerable period of time, and there are a couple of instances you have seen of Mrs Misra asking about a correction notice and the prosecution invite you to take that into account. You will decide.

D You have the evidence about the various calls that were made to the Fujitsu helpline. Mr Dunks was the witness who had accessed the records so far as that is concerned and set them out in a statement and that is the extent of what he had done. He is not really E an expert on the meaning and background for the various calls, but you will remember that as long ago as July 2005 there was an absence of power to Horizon. Another call in October resulted in a one shot password being supplied to Mrs Misra, and then in February 2006 Mrs F Misra was on the phone saying that she was apparently £6,000 down on a balance and that was all put through to the NBSC, the National Business Support Centre.

G There were further calls. The number mounted until by February of 2008 it was up to number 110, so that is the number of calls there had been to this helpline during this two and a half year period. A large number of them you have heard were to do with printer H problems and anybody who has ever used a home PC will have experienced the odd printer problem.

A Then there were the calls made during Mr Vasarmy's period there including the £1,000 stock loss on one stock unit about which Mr Vasarmy spoke and I have already referred to that.

B So how significant are those calls? Are they an indication that there was some problem at West Byfleet which casts doubt on your assessment of the validity of the findings of the Horizon system or are they the sort of glitches which any computer system is going to have, as the prosecution would say, and do not materially impact on the case as a whole? It is entirely for you to decide.

C You know from Mr Longman that there was a report made to the police. He was asked to contact them and they had a report raised by a police officer that Mrs Misra had D suspected her employee Nadia of being an illegal immigrant and she was causing trouble at the post office. It turned out that it was down the phone that she was making this complaint and it was all to do with Nadia being suspected or accused of stealing from the post office, E and previously there was the other incident where Mr Badiwalia, the brother in law of Nadia, was complaining that he had been dismissed on allegations of theft of £2,000. F Neither of these people of course has been available to either the prosecution or the defence in this trial and nor has that other person mentioned in the defence statement, Shakia Suksener.

G The experts. As I said earlier, there is a good deal of common ground between them. Mr Jenkins has discussed matters with Professor McLachlan during the course of the trial and before, provided further information which in some instances has satisfied the H Professor. But to summarise if I may, what Mr Jenkins told you was this. Horizon was installed initially on a trial pilot in September 1996 but the general roll out began in 1999 and was completed after a couple of years. So the start of this decade roughly was when

A Horizon came into use. There were more post offices then than there are now but there are still 11 and a half thousand of them, several million transactions a day.

B Mr Jenkins told you “I cannot find anything that shows any significant fault in the system.” He relied on Mr Dunks’ list of calls and if you thought Mr Dunks was possibly more of an expert himself than he turns out to be, you will recall Mr Hadrill’s comments on that and take that into account. Mr Jenkins went on to say “if there is a fault there is usually a trail that people can follow. Various parts of the system were independently validated, not C all of them because in some instances there isn’t a body to do an independent validation such as the screens, the touch screens that the cashier uses.”

D He told you that he had looked at the event logs for Mrs Misra’s time at the West Byfleet branch and found no indication of computer error and there was no evidence to support Professor McLachlan’s hypotheses, no evidence to say that the system was corrupt. That is his evidence. You will form your judgment on it. He said that the question of E training, for example, is outside his area of expertise. Of course he is a Fujitsu man, not a training man.

F As to the user interface as it is called, the screen, the keyboard, the things that the cashier uses, on Professor McLachlan’s hypothesis if they are sub-standard they could give rise to error, what Mr Jenkins could do was to tell you what had been the guidelines for the design of these screens, taking account of people’s varying experience of computers, G varying command of the English language, colour blindness and so on, cognitive impairment, and Mr Jenkins could not say that he had seen anything which confirmed that the system as installed did comply with those guidelines. The prosecution invite you to H conclude that they are satisfactory and experience has demonstrated that.

A Professor McLachlan's position is without proper evidence of their assessment and validation he cannot satisfy himself that the user interfaces of one kind or another are up to standard and that they would not cause error.

B The prosecution make the point of course that it is one thing to assert that a thing may cause error but it is another thing to establish that it has or may have caused a consistent apparent shortfall in the records. That is a point for you to consider.

C Mr Jenkins was asked about external systems having an effect on West Byfleet, for example, the transaction correction process, and his point was that if there is a transaction correction it could not take effect at the branch without being accepted by the postmaster and if that happened then the postmaster would be aware of it and if the D postmaster chose not to accept the transaction correction but to demand evidence then again that is something the postmaster and indeed Chesterfield would be aware of. That is his point. The counter argument by Professor McLachlan is that the postmaster will not E necessarily have the knowledge or the skill to deal properly with a transaction correction, to decide whether the correction itself is or is not correct.

F As to the actual transfer of cash, Mr Jenkins described the procedure, the pouches, the scanning from the bar codes, the counting, the video recording of the counting which can be checked and so on.

G Then there is the question of the fast cash button, still something of an issue between the two experts you may think, unlike, for example, foreign currency re-evaluation where they have now agreed. The fast cash button was something that particularly arose in the context of possible failed credit or debit card transactions where the transaction might H fail but nonetheless the cashier would go on and enter the transaction, causing a shortfall apparently on the accounts.

A What Mr Jenkins told you was that he had looked through the thirteen months that
he was being asked to consider from late 2006 until the end of 2007, that being the period
after the staff had been sacked as you will recall, and he told you that he found a total of 92
B failed transactions totalling £117,000 in all. The transactions over £1,000 individually
amounted to all but 6,000 of that 117,000 and he examined each of those £1,000 or more
C transactions and he found that in every case it could be resolved in that either a cheque was
presented instead of the failed card or the session was abandoned so nothing went into the
system ultimately or if things had got to the stage or it was a transaction that could not be
D cancelled it was followed by an immediate reversal transaction and that had always been
something relating to large numbers of premium bonds. So Mr Jenkins' end conclusion was
that as far as reasonably practicable he had followed the failed credit card transactions
E involving the fast cash button through and resolved them. The remainder which he had not
examined because they were small only amounted to £6,000. That was his evidence.

F Travellers cheques, no longer an issue between the two gentlemen. Calendar
Square, Mr Jenkins said he was not quite sure whether this still amounted to an issue but
certainly Mr Hadrill advanced arguments before you on this topic and so let me deal with
what Mr Jenkins told you, that there was a problem at Calendar Square in Falkirk. It was
G identified in 2005 and fixed in March 2006. It perhaps took another month or two to get it
into every branch, and it was fixed by applying some extra software.

H What had happened he said, relying on the material available to him, was that the
Calendar Square postmaster had called the helpline because of a mismatch between receipts
and payments on balancing a stock unit and it was visible on the report that was produced.
What the problem seemed to be was that if cash was transferred from one stock unit to
another physically the cash was picked up from one and put into the other. Something had

A to be entered into Horizon to record that, and what Horizon appeared to do was record the fact that it had left one terminal but it didn't record that the cash had arrived at the other although it should have been recorded at the same time.

B Mr Jenkins' evidence was that it would have been sorted out the following day but instead the Calendar Square branch had tried to sort it out there and then by doing some more transfers to correct the mismatch. According to the log that you have a copy of, the C pink incident management system report, in due course the cause of this problem was identified as being a problem as I understand it overloading of the receiving till part of the computer, masses of messages coming in at the same time causing a delay and ultimately a D time out so that the incoming message about the transfer of the cash was not logged in, and ultimately it was, it is said by Mr Jenkins, according to the records he has seen, fixed by referring it on to a company called Esher who were responsible for that part of the system and they created the software to correct the problem.

E He went on to tell you that he had looked at West Byfleet's system event logs for the whole period that Mrs Misra was there, 30th June 05 to 31st December 09, all but the last F two weeks, and he told you "I saw no sign that West Byfleet had suffered the Calendar Square problem."

G You know there is a bit of a history about the exchange of material between the two experts on this particular point. The issue was raised, and in March of this year Mr Jenkins emailed Professor McLachlan a message setting out roughly what I have just been H telling you, that that was his conclusion based on what he had seen. Professor McLachlan was working on one thing and another and it was not until his last report was served on the prosecution quite recently that it became apparent that this was, at that time at any rate, still

A
an issue and so it called on Mr Jenkins to do some more ferreting around, producing some more information for the Professor which was examined during the course of last week.

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It is not my understanding of Professor McLachlan's evidence that he is saying he has found any sign that the Calendar Square problem occurred at West Byfleet. What his position is as I understand it is this, that the report refers to the Calendar Square problem having occurred a number of times and at a number of different places and that it had apparently been part of the original set up of the Horizon system and for all that one knows it could have been inherent in all the branches up until that time and that he does not consider that the peak incident management system report with its summaries of what people said is a sufficiently authoritative document and before expressing himself in clear terms he would need to see the underlying material and the reports from Esher as to what their conclusions were. He said "I am not satisfied that the diagnosis of the problem is necessarily what is recorded in this document." You have the document and you can see it. Mr Jenkins' position is this document is the record of the way in which that problem was dealt with.

F
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So you will form your judgment about this. Even if there is no direct evidence that this problem arose at West Byfleet does the material that you have seen and the material that you have not seen lead you to the conclusion that you cannot be sure that something of that kind has not occurred and caused at any rate part of the problems that Mrs Misra reports to you? You will form your judgment.

H
The touch screens can shift out of alignment so that when you press the one button you are actually putting pressure on the pressure pad which records two, for example, and if that happens and the user becomes aware of it then the screen has to be recalibrated in some way. That could cause an error. Is it something that would cause shortfalls on the scale

A you are considering? Is it something that the cashier would notice either himself or herself or as a result of the customer raising a query? You will form your judgment about that.

B You have heard also about the NT event log for West Byfleet and you have some extracts from that contained in your documents. You will recall the closely typed pages. It is not necessary for us to try to understand or contemplate in detail, but it contains a number of instances where Professor McLachlan noted problems occurring – a corrupt storage unit, a fatal error has occurred. In 2006 an unexpected error time out occurred. That is in December C 2006. In 2008 during Mr Vasarmy’s time a fatal IO error, an unrecoverable error, and so on. What effect do they have on your assessment of the integrity of the Horizon system?

D Professor McLachlan who has been involved with computers since he was thirteen and is a director of Amsphere International, had no knowledge whatsoever of Horizon until he was instructed in this matter. His approach he told you was that he took a view on the kind of things that might have gone wrong and he tried to identify people who E could give him information so that he could review effectively the whole Horizon system from an independent point of view. I am not going through his qualifications in full. You will remember them, a very long and impressive list of appointments and achievements.

F Despite hearing Mr Jenkins give evidence of course because he was present, he continued to maintain his position in relation to user interface problems as I have reminded you. He of course abandoned the double entry point. There is that technology in place. As to G external systems, he told you “I have had no access to any external system and no information beyond what Mr Jenkins provided which was restricted by his position employed by Fujitsu and only able to release information that is within his remit.”

H So Professor McLachlan confirmed that his hypotheses remain hypotheses because, as he put it, “to a large extent I have not been able to collect information which is

A sufficient to test them. I have had no opportunity to invest some of these things under test conditions, no opportunity, for example, to review the training or to examine logs of known problems with Horizon.” He said it was hugely useful when the peak incident report in relation to Calendar Square became available.

B So when asked a question “does the system work in a consistent way?” he really said “I can’t answer that. In order to answer it you would want to conduct a complete audit over a period of time and compare it with the records kept by Horizon to see if you can be confident the system works”, as he put it “end to end”, in general.

C He said that the post office is like a mini-bank and that is agreed, and so it provides an indication of the scale of the undertaking, and Professor McLachlan feels that it would be better rather than relying on the records in the computer to have paper records, vouchers, produced by a cashier at the time of each and every transaction to provide a paper trail to check any particular incident.

D E As to the touchscreen, he said that he had had no opportunity to observe it in a real environment. He has, he told you, been to a post office, been to West Byfleet, and so far as he could see the screens seemed all right, but he was at pains to stress that he is not an expert on the actual business of designing a touchscreen and he would not wish his view to be treated as expert evidence.

F G H He continued to feel that there was the potential for error in the use of the fast cash button but there was no longer any significant difference of opinion between him and Mr Jenkins in relation to the rejected cards. Professor McLachlan felt hampered by the absence of any record of the training of Mrs Misra. He pointed to the various checks on his chart that I have just reminded you about. He thought, it is his opinion that there were discrepancies on a sufficient scale to indicate theft or fraud or mismanagement, each of

A which should have been investigated but it does not seem these particular documents were sent to the post office as a matter of course.

B I have already dealt with what he said about Calendar Square. His view was “it would be surprising if there was only one branch where that fault was active during Mrs Misra’s time, up to the time when the correction was put in place.” He summarised it by saying this. “The place I have got to is that I am unable to exclude system failure of a kind that could impact the accounting systems at West Byfleet. I cannot say I have found C anything but I cannot exclude it.”

D He told you, looking at the system as a whole and the documents that he has seen, he has concerns about the ability of the sub-postmaster to find information to raise or challenge a transaction correction. He never spoke to Mrs Misra herself. His position was “I wanted to remain completely independent and view this from an objective view and that is why I thought it was if anything unhelpful to speak to her.” Mr Tatford submits that it E would have been a sensible thing to do to at least find out from her if she was describing any particular problems, but that is again a matter for you to judge.

F Members of the jury, that I hope is a sufficient reminder of the positions taken by the two experts. As I said earlier, it is part of the evidence in the case and you judge it, applying your own good judgment and commonsense.

G When I come to remind you of Mrs Misra’s evidence the first thing you know about her of course is that she is in her thirties now, married, a mother. You have seen her employment and educational history, and until she committed the offences of false H accounting she was, as the lawyers put it, a person of good character. She had no convictions. She had never been in trouble with the police until then.

A She did by her own admission then commit a series of offences of dishonesty and
that is something which is part of the evidence so far as her character is concerned, but it is
important that you bear in mind that the fact that she committed those offences albeit they
B are offences of dishonesty does not necessarily mean that she committed the offence of
theft. Indeed it is her case, as you know, that those offences were committed not because
she had committed theft but because she was trying to keep the post office going when there
C were deficiencies not caused by her dishonesty.

Further, she admitted each of those offences very promptly when she went back to
the post office on 14th January 2008 and you take that into account in her favour, and there
D was never any offence before that. So you take all that into account.

E She told you how she bought the business for £200,000 with a mortgage and
finally earlier this year she sold up. All that was left was the shop part of the business and
that brought in £60,000. She told you that despite what it says in the CV she didn't have
much programming experience, but she decided to apply for the West Byfleet post office,
F went to the training in Hampstead for a week. There were six to eight people there and it
was from 9 until about lunchtime she said. She described going through the various
transactions. She didn't remember doing a balancing exercise. She was asked "did you
understand what you were taught?" and her answer in evidence was "I can't remember."
G "Did you feel confident that you would be able to run the post office?" she was asked and
her answer after a delay you will recall was "I don't know. I hope so."

H There was a delay before the purchase was completed and so it was in June that
she started. Junaid arrived and helped her set up the counter, put the bags out, spoke about
the alarms. She said the operation manuals were not there at the start and it took a while for

A them to arrive. She said “Junaid sat behind me, telling me how to do transactions and he went through a card on how to do daily cut-offs.”

B They were £150 short at the end of the day, she told you, “and Junaid said ‘you need to put that right’ and he said an audit is never penny for penny but I had to pay £150 out of the shop takings to make the figures balance. On day two it was short again. Junaid was there, £100 down. He just said it may be that somebody has done a transaction
C incorrectly and I had to put in more money, and that carried on through to the third day he was there. The tills never balanced. They were always down. I was told “just wait until next week and I never got the money back. The tills never corrected themselves. I said to Junaid ‘I am worried. It is my money I am putting in.’”

D “Then Junaid left and Michael came for the second week and asked me how it was going and I said ‘it is not good. I am having to put money in every day.’ He said ‘that should not happen. Let us see how it goes’, but again with Michael there I was having to put
E money in every day, £400 on one balancing, and Michael said ‘that is a bit unusual.’ He made a phone call, said he could not understand what was going on and said that he would look into it and that was that.”

F “I was introduced to the area manager, Timiko Springer, and I brought my concerns to her attention and I was told I should look out for a transaction correction which
G could take up to six months, but the losses were increasing. I was putting money in every day and the time came in October 2005 when there was an audit. By then I had put in £3,000 and I was saying to Timiko ‘I can’t go on like this. Please help me.’ She said ‘I will speak to my area manager.’”

H “The October audit was £3,000 short. I was told I had to make up the shortfall” and she told you “I was told that if I was over £500 short again I would lose the post office,

A and I remonstrated but that was the position, and after the audit losses continued. I was
concerned about having a shared till and so I decided to change to individual tills” as you
see they were by the time of the last audit. She said “I spoke to Timiko about that and she
B said she would find out what was going on but I did the individual tills myself”, Mrs Misra
told you in October 2005. “But that just created more mess. I was struggling with one unit
and having multiple units just made things worse and I didn’t get any help to sort it out.”

C “Still I had staff, Shakia Suksener and Javed and Nadia Badiwalia, brother in law,
sister in law. They were already working in the shop part. I brought Javed into the post
office and trained him and did the same later to Nadia. I trained her and then I started
D finding suspicious things happening.” She told you “I was already thinking of trying to
correct the balances and in due course perhaps sell the post office because of these
difficulties.”

E Then she told you “there was one incident of a transfer from Javed’s desk to the
office, the main till which seemed slow. I got a snapshot from his till and I found that
money had been said to have been transferred to the safe when it was not, and I concluded
F he was lying to me. He accepted that money was not there that should be and he said he
would pay it back and I thought all the losses must be down to Javed. I had been speaking to
the area manager, Timiko, about maybe the system not working properly and complaining
G to Fujitsu about losses, but it was April 2006 that Javed was dismissed, but despite that the
losses continued.” She told you “I concluded that Nadia was doing the same thing, so I
thought along with Javed the two of them were stealing money, so I stopped letting Nadia
H into the post office and both of them were dismissed. But it didn’t help. The losses
continued. I didn’t know exactly. I had said £89,000 in the interview but the losses went on
until the very end, every day.”

A You will recall I asked her “how much each day?” and she gave a rough figure of about £100 a day. If it went on for a year and the place is open six days a week, 50 weeks, 300 days, £30,000 further losses if that is right, plus of course, as you know, she borrowed over £20,000 from her own sister in law.

B Mrs Misra told you “I was doing my best there but I was in a mess from the very first day. I never complained formally to the Post Office about the losses apart from mentioning Javed to my area manager. I had to make up the losses or lose my post office. I did receive some transaction corrections probably. I tried to ignore them. I knew the minute I accepted them I would be down and so I would leave it until the next rollover and then I would have no choice. When one big amount came in I questioned it and as you have heard I was given only two options, pay by cash or by cheque.” So she told you “I made up some of the losses from the shop and some from friends and family.”

C
D
E “I could not just sell the post office because I knew that the auditors would come and I would lose it. I was not left with any option but to carry on and try to redeem these losses. I did have the £20,000 Lottery correction notice and that was taken from my salary in instalments.” You know about that.

F
G
H “I didn’t know how the losses were happening. Even though I thought I had sacked the dishonest staff, gone to separate tills, it still kept happening. So I was creating false figures in the balance sheets.” She told you how she had used the remittance pouch system, sometimes saying there was cash in the pouches when there was not and then reversing that after the end of the trading period, but there were indeed the two pouches on 14th January with the slips created on 9th January 2008 for 14 and £13,000 with nothing in either pouch.

A While I am dealing with Mrs Misra's evidence let me deal with the position of the interviews and the defence statement, two defence statements that were placed before you.

You received a short time ago earlier today an admission about an interview that took place for disciplinary purposes also in 2008, if my recollection is correct, in April.

B MR HADRILL: March 12th.

MR TATFORD: Yes. It was 12th March.

C JUDGE STEWART: March, was it? Thank you very much. I am just trying to locate my copy of the admission in relation to that. (Pause) As I have already said, members of the jury, you have the transcript of the two interviews really combining into one of 14th January. Then you had the admission as to some things that were said in the course of the March
D interview. Do you have the two defence statements?

E As you now know, once proceedings in the crown court are underway and the defendant has pleaded not guilty there is a statutory requirement for him or her to provide a document called a defence statement which should set out the general nature of her defence. In this way the court and the prosecution can be made aware of the real issues in the case, the trial can be planned sensibly and the prosecution will not be ambushed by a defence
F being put forward at the trial which has not been mentioned previously.

G You know that the first defence statement was submitted by the first solicitors before the first trial date and the second was submitted by her present solicitors several months later. The first is a very brief document. The second is much fuller. You have copies of them and you can read them. It is a feature of these documents that you sometimes have to search hard to find the kernel, that there is a good deal of material which may not be
H entirely necessary about the provisos that were being said and the demands for disclosure which has been put. What is really important for this purpose is the nature of the defence,

A and the first defence statement has it in three lines: “The defendant denies dishonestly appropriating monies belonging to the Post Office and will assert that the theft was undertaken by other employees working at the Post Office at the time the monies went missing.”

B The second defence statement is much fuller, much more detailed and much more helpful you may think and it has in the nature of the defence covering not three lines but three pages of closely typed A4 and you may think that that second defence statement sets out what Mrs Misra has said in the course of this trial.

C When Mr Tatford was cross-examining Mrs Misra he asked questions about the interview and about the first statement, and what he was asking her about was the reason for her not mentioning certain facts in the course of the early questions and the early documents, and the particular points that Mr Tatford argues were not mentioned by Mrs Misra in the first interview or the first defence statement were the warning by the auditor in 2005 that if she was £500 short again she would be suspended or lose the post office and that the losses had been going on since the beginning, that she didn’t mention the Junaid and Michael situation with losses at that time, that she didn’t mention reporting losses and thefts to her line manager Timiko, and, as you know, that material is not to be found in the first interview. There was mention in the March interview of knowing that she would get suspended if short of £500 and the tills being always short, 700 or £800.

G Mr Tatford’s suggestion, it is for you to judge, is that the reason why Mrs Misra didn’t mention those particular points at the time she was interviewed or in that first defence statement is that she had not thought them up at the time. He invites you to conclude they are not true and she has invented them to bolster her defence, and he suggests that having found some Press articles about the Horizon system she has jumped on a bandwagon.

A Let me consider first the interview under caution. Mrs Misra was indeed
cautioned and the first thing that the caution consists of is you do not have to say anything,
and that is entirely correct. A person being interviewed in these circumstances has a legal
B right to remain completely silent if she so chooses. She in fact chose to answer the questions
she was asked.

C She was also told, however, that it may harm her defence if she did not mention
when questioned a fact which she later relied on in court. She has relied on the facts that I
have just listed in court here before you and the question that arises for your consideration is
whether in the circumstances in which she found herself at the time of the interview she
D could reasonably have been expected to tell the interviewers one or more of those facts. Not
only was she answering questions but she had provided the handwritten note that you have
also got in your bundle.

E Mrs Misra has told you that she was not asked about those things. She answered
every question that she was asked and it is submitted on her behalf that it is simply not
reasonable to expect her to have raised matters about which she was not asked bearing in
F mind the circumstances that she had suddenly had these auditors descend on her. She had
never been in that situation before. Just imagine the stress that was involved and would it
really be reasonable to expect her to mention every fact which now forms part of her
G defence, bearing in mind that in March she did indeed mention those two points in the
disciplinary interview.

H As to the first defence statement, she told you that she didn't know about the legal
requirements for such a document. It does set out what might perhaps be called the bare
bones of her defence. You will remember Mr Hadrill's comments about this. Can you be
sure that it is in those spare terms because she had not thought of the things that are now

A part of her defence at that time or could it be that its brief character is simply a way in which
those solicitors chose to go about performing their task, giving away the minimum possible
in the defence statement? If you think there is any possibility that the brevity of that first
B defence statement is because of the approach of her then solicitors then you certainly would
not hold it against her.

C But returning to the interview, you decide whether her failure to mention facts in
that interview should count against her. You should only reach such a conclusion if you are
sure that it is a fair and proper thing to do. You must be sure that the prosecution case is
D sufficiently strong to require an answer, that Mrs Misra could reasonably have been
expected to mention the facts on which she now relies and the only sensible explanation for
her failure to mention those facts is that she has invented them subsequently.

E Having given you that rather lengthy direction for which, I am sorry, but it is
necessary for me to do it, I need to place this whole topic in context. I have been talking
about not mentioning something in an interview essentially. You should not convict her just
because of or even mainly because of a failure to mention those facts at that time. Don't
F give this topic undue importance or significance. It is simply one factor that you take into
account along with all the other evidence when you are deciding the ultimate question as to
whether the prosecution have proved that she is guilty of the offence of theft, and what she
G has said about that and repeated many times you recall is that she was not stealing. She was
not hiding the losses. Because she had been stealing it was for her own benefit in the sense
that it helped her keep the post office going, but she told you "I have admitted false
H accounting from day one and I have not committed any offence of theft."

Omika Kalia was able to confirm that in April 2006 she had given Mrs Misra, her
sister in law, £16,000 and there is a banking document which supports that, and she had

A given her a further £6,000 odd at various times during 06 and 07, and indeed Mrs Misra had
been with her on 14th January 2008 in order to collect some further money but they didn't
manage to achieve that because the call came saying that the auditors were waiting and so
she hotfooted it back to West Byfleet.

B
Members of the jury, there it is. That is a reminder of the evidence. Is there any
point that I have failed to deal with or any correction that needs to be made?

C MR TATFORD: No, nothing from me. Thank you.

MR HADRILL: No.

D JUDGE STEWART: I shall not repeat the comments that were made in the prosecution and
the defence closing speeches again. You will have all that clearly in mind. Members of the
jury, it is quarter to four. I am going to ask you to retire in a moment or two. Don't think
that because you are going out at quarter to four you are being put under pressure to reach a
verdict this afternoon. It would be perhaps a little surprising given the number of issues that
E you have had to consider if you did so, but nothing I say is intended to give any indication
of how long or how short your retirement should be. It is entirely up to you, and you don't
know yet. Time will tell.

F
But it may be useful if you have a few minutes now this afternoon just to get
yourselves settled into your room, get your papers organised and make one or two
G preliminary decisions, and perhaps the first decision you make should be to choose one of
you to be what we still call the foreman of the jury, obviously a man or woman. He or she
will essentially be the person who speaks on your behalf when you return and announce
your verdict. He or she will be the person who says either "guilty" or says "not guilty."

H
The next thing I am going to say is in a sense none of my business because it
relates to the way you go about your deliberations but I am going to have the temerity to

A offer this observation. When you have twelve people in a room talking about something and
each of them has something to say it is easy for people to start talking over each other,
B talking all at once. It is also easy for three or four people at one end of the table to embark
on a little discussion of the topic they are interested in while everybody else down the other
C end is talking about something else, and it may be that you will think that it would be
preferable if your discussions had a bit more structure to them than that and in order to
achieve that perhaps the person you choose to be the foreman of the jury could also take the
D chair and maybe tap the table if it is necessary to bring you back to order if things get a little
disorganised. As I say, that is for you to decide. It is none of my business, but I put it
forward with diffidence for your consideration.

E We have the ushers here who have to take an oath and I would be grateful if you
would just wait quietly while they do so, and once that is complete will you then gather up
your papers, you will be taken to your room and any further material will be brought
through in a few moments.

(Jury retire at 3.49 p.m.)

F MR HADRILL: Your Honour, I assume the defendant can have bail until further notice?

G JUDGE STEWART: Yes. She needs to be in the building or she can step out on to the front
steps if she needs some fresh air. Assuming the jury are out tomorrow and if it gets to 1
o'clock and they have not returned their verdict then she can leave the building for the
adjournment.

H MR HADRILL: I don't know when your Honour would consider if it goes past what time
tomorrow? I have a funeral to attend Thursday morning. If I can have permission to be
absent provided there is cover I would be grateful.

A JUDGE STEWART: I think we are going to have to cross each bridge as we come to it so far as that is concerned.

MR HADRILL: So be it.

B JUDGE STEWART: In principle if you need to be away for a funeral and somebody can cover Mrs Misra's interests of course I agree.

MR HADRILL: Thank you very much.

C (Adjourned for a short time)

(Jury return to court at 4.21 p.m.)

D JUDGE STEWART: I shall not ask you to continue any longer this afternoon. I will release you now until 10.15 tomorrow morning, but I need to add something to what I have already said on the topic of talking or not talking about this trial. What I said at the outset about not discussing the case with people outside the twelve of you obviously still applies with undiminished force, but what I have to say now relates to the particular situation where you have begun your deliberations.

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H The principle is that a jury's deliberations at this stage in the trial take place only when all twelve jurors are present in the jury room. In the old days once a jury went out they had to stay in the room together until they reached a verdict no matter how long it took, how late it got and the result was some very late nights and some very grumpy jurors. We don't do that any more. We trust members of the jury to be sensible about this and to abide by the instructions that I am going to give you, and the instruction is this, that from now until the time you are back in your room tomorrow your deliberations are suspended, so you are not even talking to each other about the trial.

When you leave now keep off the subject. When you return to the building tomorrow keep off the subject, and you will have to come back into court so that the ushers

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can take again the oath that they took earlier and from which I have to release them now and then once that has been done you will return to your room and only then will you pick up your deliberations from where you were when we asked you to come back in. So if

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something comes to you in the middle of the night just keep it in mind but don't do anything about it at that stage until you are back in your room and obviously don't go off doing any researches or anything of that kind.

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So that is for today. Thank you very much for your time. 10.15 tomorrow if you would, please.

(Court adjourned)

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