

CASE TRANSCRIPT: ENGLAND & WALES

Case citation:

Regina v Seema Misra, T20090070

Case number:

T20090070

Name and level of the court:

In the Crown Court at Guilford

Trial dates:

**11, 12, 13, 14, 15, 18, 19, 20, 21 October and
11 November 2010**

Members of the Court:

**His Honour Judge N. A. Stewart and a
jury**

Lawyer for the prosecution:

**Mr Warwick Tatford of 9-12 Bell Yard,
briefed by the Crown Prosecution
Service**

Lawyer for the defendant:

**Mr Keith Hadrill of Furnival Chambers,
briefed by Coomber Rich Solicitors,
Basingstoke**

England & Wales; theft; electronic evidence; Post Office Horizon System; 'reliability' of computers

Introduction

The trial of *Regina v Seema Misra* (T20090070, in the Crown Court at Guilford before His Honour Judge N. A. Stewart, October 2010) is a matter regarding the theft of monies from the Post Office by a sub-postmistress using the Horizon operating system. This note offers a number of observations relating to the evidence of the Horizon operating system. To put the matter into context, the Horizon operating system has, for many years, been challenged by a number of sub-postmasters and postmistresses that have been required to use it since it was introduced. There has been greater coverage by the press since 2010. The reader might be aware of a civil case regarding the Horizon system in a civil context: *Post Office Ltd v Castleton* [2007] EWHC 5 (QB). A list of selected sources of information is set out below, and this note presumes that the reader is familiar with the examples of failure of software and the difficulties with determining whether software code has failed or is in error, as set out in chapter 5 of *Electronic Evidence* (3rd edn, LexisNexis Butterworths, 2012) – it is interesting that few lawyers know of this text or are aware of the significance of the content chapter 5, even though the legal practitioner and scholar George L. Paul emphasized the importance of this chapter when he reviewed it in *Jurimetrics, The Journal of*

Law, Science, and Technology, Volume 53, Number 4, (Summer 2013), 467-481.

Warning

The only information relating to this case is set out in the transcript of the trial. In itself, the transcript of the trial is only a record of the words spoken by those participating. It does not reflect the nuance of tone of voice and physical presence of the participants. In addition, there are other materials that are associated with the trial that are not available, including the various applications by the lawyers before the trial, the reports of the expert witnesses and the various exhibits.

This means that the reader must take great care in reaching settled conclusions from the transcript of the trial, because the transcript is only one part of the entire record.

Disclosure of relevant evidence

To challenge evidence from a computer or computer-like device, it is necessary to fully understand the various systems that make up and are linked to the source of the evidence relied upon, together with details of the errors that were 'fixed' by way of updates. The party relying on the evidence rarely offers up such evidence, and the party wishing to challenge the digital evidence will seldom be in a position to submit sufficient evidence to substantiate any application to a judge to order relevant evidence to be disclosed. This is why it is necessary to appoint a digital evidence specialist to act as an expert witness

and why it might be necessary, as in this case, for the defence to seek disclosure of relevant evidence. The disclosure of relevant digital data was a live issue in this case (for which see Day 1 Monday 11 October 2010, 22 – 24), and the outcome did not seem to be very satisfactory for the defence – indeed, a BBC 1 Panorama programme entitled ‘Trouble at the Post Office’ broadcast on Monday 17 August 2015 at 7:30 pm indicated that the defence had made requests to a judge for the disclosure of relevant materials. The factors to be taken into account regarding disclosure include, but are not limited to, the cost in making applications (legal fees, judge’s time) and establishing whether the data requested is relevant. Arguing that the data requested is relevant is difficult for the defence, given that they are not aware of (i) the nature of the evidence that can be obtained, (ii) the complexity of the systems from whence the data is extracted, (iii) how one system operates with other connected systems, and (iv) the presumption that computers are ‘reliable’ (for which see chapter 5 of *Electronic Evidence* where this topic is discussed at length and for which there is no evidence for the proposition).

Comments regarding computers

The prosecutor’s comments about computers in the discussion with the judge regarding disclosure (Day 1 Monday 11 October 2010, 21A-C; 23H-24A), and in his opening speech, highlight a misunderstanding about how computers and computer systems fail. The prosecutor said (Day 1 Monday 11 October 2010, 49F-H):

‘So it has got to be a pretty robust system and you will hear some evidence from an expert in the field as to the quality of the system. Nobody is saying it is perfect and you will no doubt hear about a particular problem that was found, but the Crown say it is a robust system and that if there really was a computer problem the defendant would have been aware of it. That is the whole point because when you use a computer system you realise there is something wrong if not from the screen itself but from the printouts you are getting when you are doing the stock take.’

To assert that a complex system, which the Horizon software appears to be, is ‘robust’, the prosecution ought to have produce evidence to establish what was meant by ‘robust’ and the truth of the claim. No

evidence was produced to demonstrate that the system was ‘robust’, nor to establish the ‘quality’ of the system – none of the test set out in chapter 4 of *Electronic Evidence* seem to have been considered. The Post Office also failed to produce any evidence regarding the operation of the operating environment and the reconciliations, error rates, controls, and relevant internal audit processes used to ensure integrity, and to provide details of the various updates that fixed problems with the software.

Further, the comment that the defendant would have been aware of a defect in the software (excluding the specific defect discovered in a post office in Callendar Square in Falkirk) is manifestly incorrect. Neither observation was accurate, nor, it appears, sustained by any evidence produced at trial. Moreover, the observation (Day 1 Monday 11 October 2010, 23H – 24A) that Seema Misra was ‘the person responsible for the computer system at this office’ demonstrates the failure of the prosecutor to understand that end users of the Horizon system do not control the computer system: Fujitsu undertake this task.

In addition, given the complexity of computer systems, it can be difficult to establish the cause of a problem. This is not only highlighted in chapter 5 of *Electronic Evidence*, but also illustrated in those rare examples that exemplify the sort of issues that are hidden from public view. For instance, Andrew Bridgen, conservative Member of Parliament for North West Leicestershire in the previous Parliament, set out one such disturbing issue that the Post Office would probably have preferred to have kept secret, and might deny ever took place, in the House of Commons Debate on 17 December 2014 regarding the Post Office Mediation Scheme (Column 535WH and 536WH):

‘The issue first came to my attention because of the plight of a constituent, Mr Michael Rudkin. For 15 years, he was a sub-postmaster. He served as the most senior member on the national executive of the National Federation of SubPostmasters and as the chairman of the federation’s negotiating committee. He was responsible for negotiations with Post Office Ltd and Royal Mail Group, so he is an experienced sub-postmaster. I would like to share with Members his experience of the problems with the Horizon system, which demonstrates that significant questions need to be asked of the

Post Office, although it is reluctant to answer them.

Mr Rudkin's story starts on Tuesday 19 August 2008. In his official capacity as a negotiator on behalf of sub-postmasters, he was invited to a meeting at the Fujitsu/Post Office Ltd offices in Bracknell to discuss problems with the Horizon system. If Mr Rudkin is telling the truth, which I have no doubt he is, this sequence of events raises questions about the system, which the Post Office must answer.

On arrival that morning, my constituent signed the visitors' book in reception and waited for his chaperone, a Mr Martin Rolfe. Mr Rolfe took him to the second/third floor, and they entered a suite where Mr Rudkin recognised Horizon equipment on the benches. There was only one other person in the room—a male of approximately 30 to 35 who was reluctant to engage in conversation with Mr Rudkin or Mr Rolfe.

Mr Rolfe asked Mr Rudkin to follow him through a number of pass card-protected security doors to some stairs. They went down to the ground floor and then entered the boiler room. Mr Rudkin states that a number of men dressed in casual office wear were standing around the doorway. They became very uncomfortable about Mr Rudkin's presence and left.

Having entered the boiler room, Mr Rudkin instantly recognised two Horizon terminals. There were data on both screens, and an operative was sitting in front of one of them, on which the pure feed for the Horizon system came into the building. Mr Rudkin asked if what he could see were real-time data available on the system. Mr Rolfe said, "Yes. I can actually alter a bureau de change figure to demonstrate that this is live"—he was going to alter a figure in a sub-postmaster's account. He then laughed and said, "I'll have to put it back. Otherwise, the sub-postmaster's account will be short tonight." Mr Rudkin expressed deep concern, because he had been told that no one had remote access to a sub-postmaster's account. At that point, he was politely but speedily taken to reception, and he was told to leave the building.

Mysteriously, the next day, Wednesday 20 August 2008, a Post Office Ltd auditor—a gentleman Mr Rudkin knew, by the name of Paul Fields—arrived at Mr Rudkin's sub-post office. He proceeded to tell Mr Rudkin that his branch had a loss of £44,000. Interestingly, Mr Rudkin maintains that the investigator knew the size of the loss before he even entered the premises.

Mr Rudkin was absolved of all knowledge of the loss by Post Office Ltd, but he was ordered to pay the money back at the rate of £1,000 a month from his salary. As we have heard, the sub-postmaster is completely liable under the contract for all losses. As Mr Rudkin points out, why would someone steal money from themselves when they know that?

After Mr Rudkin had paid £13,000 back to Post Office Ltd, the Post Office started proceedings against Mr Rudkin's wife for false accounting. It also applied for a confiscation order on all his property and had his bank account frozen under the Proceeds of Crime Act 2002. Mr Rudkin has since cleared all his debts to Post Office Ltd. In the process, he has lost his business, his reputation, his position as a magistrate, some property and his good name, and he has been unable to work since.'

The observations noted above about the alteration of data were also made by Richard Roll, a previous employee of Fujitsu in the BBC 1 Panorama programme entitled 'Trouble at the Post Office' broadcast on Monday 17 August 2015 at 7:30 pm.

Occasionally, people previously employed in the banking sector will support the criticisms levied by Professor Ross Anderson and his colleagues at the University of Cambridge Computer Laboratory – but in general, it is exceedingly difficult to find relevant information regarding how rickety computer systems are in publications that are freely available.¹

The evidence of expert witnesses

In this case, an America company named Escher Group Limited (spelt 'Esher' in the transcript) provided the communication program for the Horizon system called 'Riposte'. Gareth Jenkins, the system

¹ Professor Ross Anderson: <http://www.cl.cam.ac.uk/~rja14/>; Ken Lindup, 'Technology and banking: lessons from the past', *Digital Evidence and Electronic Signature Law Review*, 9 (2012) 91 – 94. *Digital Evidence and Electronic Signature Law Review*, 12 (2015) | 47

architect for Fujitsu Services, was asked about the possibility that a problem that might arise between the systems, but he considered this was of no relevance, even though he did not know whether the problems encountered with the Riposte software might have affected the Horizon system (Day 4 Thursday 14 October 2010, 97 – 98). In effect, the prosecution did not present any witness for the defence to cross examine on this particular and important point, although it was admitted that the Escher software appeared to be the cause of the problem encountered at the post office in Callendar Square in Falkirk (examination in chief: Day 4, Thursday 14 October 2010, 46F – 50; cross examination: 88G – 111). Mr Jenkins relied on a great deal of hearsay in giving his evidence, he rarely obtained and submitted original data, and on occasions spoke to other people in Fujitsu Services to ascertain answers to technical questions – yet none of the people he spoke to were called to give evidence.

Professor Charles Alistair McLachlan was appointed by the defence to act as their expert witness. He formed three hypotheses that might serve to explain the losses:

1. Poor user design and/or inadequate user experience.
2. The failure of those employed to properly process transactions.
3. External systems that were responsible for providing incorrectly entered data to Horizon.

Professor McLachlan did not have sufficient evidence to test some of his hypotheses. He made an important point that is readily accepted by specialists dealing with the malfunctions of software. The previous owner of the post office run by Seema Misra claimed that they did not have any problems. It later transpired that this was not correct (Day 5, Friday 15 October 2010, 2 – 9). However, before the first owner of the post office made the additional admission, the prosecutor reached the false conclusion that because the first owner of the post office did not have any problems, it followed that there was no failure of the computer system at a later date (Day 1 Monday 11 October 2010, 50F). The exchange between the prosecutor and Professor McLachlan relating to the way computers fail comprised the following (Day 5, Friday 15 October 2010, 2 – 9, 84E-H):

Q ... Does that not help rule out system failure?

A. I don't think it forms a view one way or the other.

Q Well, is it not relevant?

A. Is it relevant?

Q Yes, the fact that it worked perfectly well for the other people?

A. Well, the way that I would state what you have offered is that other people were able to use it effectively which is slightly different from saying that it worked perfectly well for other people. With the example of Callendar Square, I believe the evidence is that the problem with the Horizon system and the Riposte(?) component had been present since 1998 so between 1998 and when Callendar Square identified the problem nobody else had been able to find that problem.

Arguably, the evidence of the software system was not sufficient for anybody to make a decision based on the evidence put forward in the trial, and it seems that all Professor McLachlan could do was highlight the fact that he had so little evidence to consider, that he was not able to offer any sensible or conclusive conclusions.

Concluding observations

A range of problems were faced by those taking part in this prosecution: judges that had to hear preliminary applications regarding appropriate disclosure of evidence; busy solicitors and barristers that had to try and take time out of busy schedules to understand the issues, formulate theories of the case and then present and challenge the evidence called at trial; the expert witnesses for the prosecution who was in turn constrained in obtaining relevant evidence; the defence expert in testing what little evidence was made available; the members of the jury, the ultimate finders of fact, for having to assess the evidence presented at trial – inadequate as the evidence relating to the computer system appeared to be – in order to determine the guilt or innocence of the accused.

It must also be noted that the first firm of solicitors appointed to defend Seema Misra, as well as the barrister, were wholly unaware of the complexities of the Horizon system, and did not appear to have even considered that the Horizon system might have been at fault. It was only when Seema Misra dramatically

found such evidence for herself on the day set for trial, that the first trial was abandoned and she obtained alternative legal representation (Day 6 Monday 18 October 2010, 138 – 139).

Dealing with evidence from computer and computer-like devices is very expensive. The system of evidence, procedure and disclosure has not adapted to the complexities of digital data, even though it is now ubiquitous. The legal profession needs to concern itself with becoming sufficiently knowledgeable about the delicate nature of the networked world in which we live today – and that includes teaching future members of the legal profession about electronic evidence.

If there is a student looking for a possible topic for a PhD, the disclosure of digital evidence in legal proceedings and the need for fairness of the parties is one such subject.

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A selection of relevant websites

Justice for Subpostmasters Alliance
<http://www.jfsa.org.uk/index.aspx>

Nick Wallis web site on the Horizon system
<http://becarefulwhatyouwishfornickwallis.blogspot.co.uk/2013/08/post-office-2nd-sight-report-into.html>

House of Commons

House of Commons Debates, 17 December 2014:
Column 526WH Post Office Mediation Scheme
<http://www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141217/halltext/141217h0001.htm>

Postal Services Bill, Session 2010-2011: Memorandum submitted by Justice For Subpostmasters Alliance (JFSA) (PS 14) November 2011
<http://www.publications.parliament.uk/pa/cm201011/cmpublic/postalserv/memo/ps14.htm>

Reports

Ian R Henderson CCE, CISA, FCA and Ron Warmington CFE, FCA, *Interim Report into alleged problems with the Horizon system* (Sight Support Services Limited, 8 July 2013)
<http://corporate.postoffice.co.uk/sites/default/files/Second%20Sight%20Interim%20Report.pdf>

Confidential reports

Initial Complaint Review and Mediation Scheme, Briefing Report Part 1 (Sight Support Services Limited, 25 July 2014)

Initial Complaint Review and Mediation Scheme, Briefing Report Part 2 (Sight Support Services Limited, 21 August 2014)

Post Office

Post Office Press Release: Post Office Statement On Findings Of Interim Report Into Horizon Computer System, 8 July 2013
<http://www.mynewsdesk.com/uk/post-office/pressreleases/post-office-statement-on-findings-of-interim-report-into-horizon-computer-system-1034990>

Selected news reports

Rebecca Thomson, 'Bankruptcy, prosecution and disrupted livelihoods – Postmasters tell their story', *Computer Weekly*, 11 May 2009
<http://www.computerweekly.com/news/2240089230/Bankruptcy-prosecution-and-disrupted-livelihoods-Postmasters-tell-their-story>

Karl Flinders, '85 sub-postmasters seek legal support in claims against Post Office computer system' *Computer Weekly*, 7 October 2011
<http://www.computerweekly.com/news/2240105787/85-sub-postmasters-seek-legal-support-in-claims-against-Post-Office-computer-system>

Matt Prodger, 'Investigators to check Post Office computers', *BBC News*, 21 June 2012
<http://www.bbc.co.uk/news/uk-18535354>

Karl Flinders, 'Post Office launches external review of system at centre of legal disputes', *Computer Weekly*, 22 June 2012
<http://www.computerweekly.com/news/2240158501/Post-Office-launches-external-review-of-system-at-centre-of-legal-disputes>

Karl Flinders, 'Post Office admits that Horizon system needs more investigation', *Computer Weekly*, 2 January 2013
<http://www.computerweekly.com/news/2240175402/Post-Office-admits-that-Horizon-system-needs-more-investigation>

Matt Prodger, 'Bug found in Post Office row computer system', *BBC News*, 8 July 2013

<http://www.bbc.co.uk/news/uk-23233573>

Karl Flinders, 'Post Office Horizon system investigation reveals concerns', *Computer Weekly*, 8 July 2013

<http://www.computerweekly.com/news/2240187566/Post-Office-Horizon-system-investigation-reveals-concerns>

Tom Rowley and Olivia Goldhill, 'Labelled as criminals', *The Telegraph*, 14 July 2013

<http://www.telegraph.co.uk/news/uknews/royal-mail/10179024/Labelled-as-criminals.html>

Dan Wharburton, 'Sub-postmaster cleared of £85,000 theft charges', *The Journal*, 16 August 2013

<http://www.thejournal.co.uk/news/north-east-news/sub-postmaster-tom-brown-cleared-5739468>

'Justice' hope over alleged Post Office fraud cases', *BBC News North West Wales*, 27 August 2013

<http://www.bbc.co.uk/news/uk-wales-north-west-wales-23854696>

Karl Flinders, 'End in sight for sub-postmaster claims against Post Office's Horizon accounting system', *Computer Weekly*, 28 October 2013

<http://www.computerweekly.com/news/2240207934/End-in-sight-for-sub-postmaster-claims-against-Post-Offices-Horizon-accounting-system>

Karl Flinders, 'Former Lord Justice of Appeal Hooper joins Post Office Horizon investigation', *Computer Weekly*, 30 October 2013

<http://www.computerweekly.com/news/2240208118/Former-Lord-Justice-of-Appeal-Anthony-Hooper-joins-Post-Office-Horizon-investigation>

Karl Flinders, '150 subpostmasters file claims over 'faulty' Horizon accounting system', *Computer Weekly*, 25 November 2013

<http://www.computerweekly.com/news/2240209819/150-subpostmasters-make-claims-to-Horizon-accounting-system-investigation>

'Post Office IT system criticised in report', *BBC News*, 9 September 2014 <http://www.bbc.co.uk/news/uk-29130897>

Karl Flinders, 'Fresh questions raised over Post Office IT system's role in fraud cases', *Computer Weekly*, 10 September 2014

<http://www.computerweekly.com/news/2240230333/Fresh-questions-raised-over-Post-Office-IT-systems-role-in-fraud-cases>

'More trouble looms over the Horizon Post Office Fraud', *Private Eye*, Issue 1375 [http://private-](http://private-eye.co.uk/current_issue.php?issue=1375)

[eye.co.uk/current_issue.php?issue=1375](http://private-eye.co.uk/current_issue.php?issue=1375)

Neil Tweedie, 'Decent lives destroyed by the Post Office: The monstrous injustice of scores of sub-postmasters driven to ruin or suicide when computers were really to blame', *Daily Mail*, 25 April 2015

<http://www.dailymail.co.uk/news/article-3054706/Decent-lives-destroyed-Post-Office-monstrous-injustice-scores-sub-postmasters-driven-ruin-suicide-computers-really-blame.html>

Index

[Day 1](#)

Monday 11 October 2010

2 – 24	Preliminary matters and request regarding disclosure
24 – 27	Ruling
28	Jury sworn
28 – 30	Judge's comments
30 – 57	Prosecution opening speech
57 – 63	Examination in chief, Ramprakash Vasarmy, sub-postmaster at West Byfleet
63 – 69	Cross examination
70 – 72	Re-examination

[Day 2](#)

Tuesday 12 October 2010

2 – 3	Preliminary discussions in the absence of the members of the jury
3 – 30	Examination in chief, Kevin Andrew Noverre, auditor, Post Office Limited
30 – 58	Cross-examination
58 – 61	Re-examination
59 – 60	Questions from the judge
61 – 86	Examination in chief, Adrian Morris investigator, Royal Mail
86 – 90	Cross-examination
90	Re-examination
90 – 92	Discussion with the judge and court adjourned

Day 3**Wednesday 13 October 2010**

- 2 – 6 Reading written statement of Elaine Ridge, contracts manager, Post Office Limited
- 6 – 27 Examination in chief, Andrew William Bayfield, National Appeals and Business Propositions Manager, Post Office Limited
- 16 – 17; Questions by the judge
25
- 27 – 50 Cross-examination
- 50 – 58 Re-examination
- 58 – 70 Examination in chief, Andrew Paul Dunks, security analyst, Fujitsu
- 70 – 85 Cross-examination
- 85 – 87 Re-examination
- 87 – 88 Court adjourned

Day 4**Thursday 14 October 2010**

- 2 – 59 Gareth Clifford Jenkins, system architect, Fujitsu Services
- 59 – 123 Cross-examination
- 123 – 139 Re-examination
- 137 – 139 Questions by the judge

[Day 5](#)**Friday 15 October 2010**

- 2 – 7 Further cross-examination of Ramprakash Vasarmy
- 7 – 9 Re-examination
- Defence expert witnessed called
- 9 – 62 Examination in chief, Charles Alistair McLachlan
- 62 – 110 Cross-examination
- 87; 89 Questions by the judge
- 110 – 113 Re-examination
- 114 Court adjourned

[Day 6](#)**Monday 18 October 2010**

- 2 – 14 Examination in chief, Jonathan Geoffrey Longman, security Adviser for the Post Office Limited
- 14 – 17 Cross-examination
- 17 – 19 Re-examination
- End of case for the prosecution
- 19 – 25 Application by the defence in the absence of the members of the jury regarding disclosure
- 25 – 27 Ruling
- Case for the defence
- 27 – 89 Examination in chief, Seema Misra

- 89 – 157 Cross-examination
- 138 – 139 Observations to clarify facts regarding first solicitors and first trial by the judge
- 158 – 162 Re-examination
- 163 – 164 Questions by judge
- 164 – 167 Examination in chief, Omika Kalia, sister in law
- 168 – 172 Cross-examination
- End of case for the defence

Day 7

Tuesday 19 October 2010

- 2 – 14 Submissions in the absence of the members of the jury regarding adverse inferences in accordance with section 34 of the Criminal Justice and Public Order Act 1994 and issues covering points of law in the judge's summing up, including questions from the members of the jury
- 14 – 19 Members of the jury in court, questions answered
- 19 – 36 Closing speech for the prosecution
- 36 – 52 Closing speech for the defence
- 53 – 90 Summing up
- 90 Members of the jury retire at 3.49 pm
- 91 – 92 Instructions by the Judge

Day 8

Wednesday 20 October 2010

- 2 Members of the jury retire at 10.21 am
- 3 Members of the jury return at request of judge 4.09 pm, court adjourned

Day 9

Thursday 21 October 2010

- 2 Members of the jury retire at 10.25 am
- 2 Members of the jury return at 12.34 am; verdict
- 2 – 8 Post trial matters; jury discharged

Sentence

Thursday 11 November 2010

- 2 – 4 Prosecution application for confiscation proceedings
- 4 – 9 Mitigation
- 9 – 15 Sentence
- Count 1: 15 months' imprisonment
- Remaining counts: 6 months' imprisonment for each, concurrent with the sentence on count 1

Using the Index

We are pleased to be able to present the full case transcript for **Regina v Seema Misra, T20090070** in the **Documents Supplement** to this volume of *Digital Evidence and Electronic Signature Law Review*.

The page layout and pagination of the original transcript for each day have been retained for ease of reference to the text searchable PDFs.

The links in this Index will take you through to the transcript of proceedings in the **Documents Supplement** for that particular court day.