

INTERNAL MEMORANDUM

TO: Oliver Jones

FROM: Adelajda Bachleda

MATTER: Case of William Brown

DATE: 7 May 2021

You have requested me to provide a comprehensive memorandum regarding the case of a client of Trinity Solicitors - William Brown. Our firm advises the client as a part of a duty solicitor scheme.

William Brown has been accused of two offences of theft during his work as a bar secretary at a rugby club. Among other duties, William was responsible for checking inventory, stock management, ordering supplies, paying for goods and managing the expenses. His another job was banking the takings of the club. After a beer festival that took place in the club, the income earnings were supposedly stolen. The second instance of an alleged theft was stealing alcohol stock. Due to William's role, he was suspected of committing the theft. The total amount of money William is accused of stealing is £3,000.

To determine a guilt of a person, two elements of a crime need to be established – mens rea and actus reus (Studyrocket, 2019). I would like to consider mens rea of our client first. Mens rea refers to a guilty mind, an intention to commit a crime (Studyrocket, 2019). It is important to consider whether William had any motives to resort to a theft, and if he did, what source of motivation it could be. To start with, I would like to summarise his background. It can be said that he is known as a person of good character. He served in the Territorial Army and is currently pursuing a postgraduate degree in teaching. His service in the army implies that William is a disciplined person with understanding of consequences and responsibility. His annual income is £12,000, but he recently inherited £50,000 from his grandmother. Even though his annual salary is clearly below the average, it may be sufficient for a post-graduate student who cannot afford to work full-time along their studies.

Analysing William's background, it can be said that the client did not have any clear and apparent motives to commit a theft of a value of a one fourth worth annual salary. As he is studying for his postgraduate degree, committing an offence would mean risking his studies and his future career.

The second element of crime is a guilty act, or the fact of doing something illegal. William claims that he did not committed an offence of a theft. The burden of proof lies on the prosecution. The type of evidence is not known yet. However, the usual types of evidence to be expected should be CCTV recordings, financial records, receipts, bank statements, financial summaries and if possible, any witnesses (Malley, 2018). The instance of a money theft from a beer festival needs to be proven by relevant recordings, daily summary of takings and the actual amount of money in the cash register.

The defendant should, but is not required, to clarify differences and explain the process he was following.

Theft is an act contrary to the section 1 of the Theft Act (1968). The category of the theft William is charged with is stealing in breach of trust. The possible sentence has a very wide range. The maximum penalty is 7 years of custody, while the minimal sentence would be a discharge (Sentencing Council, 2016).

To determine a possible sentence, two usual criteria are used: culpability and harm. In instance of a theft charges, the culpability applies to a level of planning and sophistication (Sentencing Council, 2016). If a theft is committed in a workplace, it includes the degree of breaking of a trust in a company, and other means, such as using intimidation or threats. The higher culpability, the higher sentence an act carries. The culpability level is denoted by A, B and C, where A is the highest and C is the lowest. The offence William is accused of is likely to fall into a medium – B category. The act of a theft certain required planning and breaching some a trust in a company by using his position. For a theft to be classified with lesser culpability, it would usually be required that it was committed under someone's direction, influence or coercion and did not involve a lot of planning, or the guilty act was not fully understood. Classification of harm for the offences William is charged with is clear. There are four categories of harm, each of them specifies a range of value of goods that were stolen (Sentencing Council, 2016). The category 1 is the highest and applies to thefts of values over £100,000. The alleged £3,000 fall into a third category, second lowest. Knowing the culpability and the degree of harm, it is possible to estimate what possible penalty William may be facing if found guilty. The starting point for a sentence would be a high-level community order. However, the penalty will range from a low-level community order to 36 weeks' custody. The low-level community order would constitute between 40 and 80 hours of unpaid work. In case of a medium level, it goes up to 80-150 hours and for high level – 150 to 300 hours.

Section 122(2) of the Coroners and Justice Act (2009) provides a guideline on case allocation. In accordance with Section 19 of the Magistrates' Courts Act 1980, the Magistrates' Court would determine if a case should be decided in a magistrates' or Crown's Court (Parliament of the United Kingdom, 1980).

Theft is an 'either way' offence, which would be considered either for the magistrates' or the crown court (Cestaro, 2019). At the first hearing at the magistrates' court, an accused person will be asked if they plead guilty. Then, the court would decide whether it has enough sentencing power to deal with the case, or if it should be sent to the crown' court for a sentence. The case may be deemed too serious to be decided in the magistrates' court if the potential sentence could exceed 6 months of custody for a single offence, or 12 months of custody for two offences (Defence Barrister, n.d.). The Crown Court has the powers to deal with more serious crimes and convict persons for longer custodial sentences. Indictable offences should be automatically sent to the Crown Court. Those are the most serious crimes - murder, manslaughter, rape or robbery. Theft with a breach of trust would not be considered an indictable only offence (Cestaro, 2019).

If a case is decided to be suitable for Magistrates Court, the defendant has an option to ask for a trial to take place in the Crown Court. (Defence Barrister, n.d.) Furthermore, the defendant can also decide whether it should be a trial by jury. Having analysed the law, it appears likely that the case of William will be initially allocated to the Magistrates Court. Even though the theft is an act against the section 1(1) of the Theft Act 1968 and carries a maximum penalty of 7 years of custody, the category of the offence should be considered as lower – most probably category C. As he is charged with two offences,

the maximum penalty that Magistrates Court can pass is 12 months of custody. However, the maximum penalty for category C theft is 36 weeks of custody.

Despite the fact that William may be facing a lower maximum sentence in Magistrates Court, it still does not mean that he should not consider electing a trial by jury in the Crown Court. As per the Crown Prosecution Service Annual Report and Accounts 2019–20 (The Crown Prosecution Service, 2020), the conviction rate is lower in the Crowns Courts (59% of cases), while the conviction rate in Magistrate Courts is 68%. There are several advantages of being judged by a jury. It consists of 12 people, who are selected in a way that they have no relationship with the defendant or the case (Kessling, n.d.). Using jury is also thought by lawyers as a fairer method to determine one's guilt. The jury is a group of people, therefore there is a smaller chance of an unfair conclusion based on bias. Statistically, there is a higher chance that the defendant would be acquitted when tried by jury.

There are also disadvantages of taking the case to Crowns Court. First, in case of a lost case, the defendant may be required to pay prosecution costs, which are by far higher than if the case was decided in Magistrates Court (Kessling, n.d.). Furthermore, there can be a significant delay for a trial to take place due to a workload in Crowns Court. Another thing is that the trials in the Crown Court are more formal, which may be an extra stress for the defendant. A person sentenced by the Magistrates' Court has an automatic right to appeal, but for sentences in Crowns Court, it requires a permission of a senior judge. Last, but not least, the Crown Court has a potential of passing a higher sentence than the Magistrates' Court. The final choice whether the case should be decided in the Magistrates or the Crown Court belongs to the defendant. It is not an easy decision, as both options have their advantages and disadvantages. However, I would suggest having a trial in Magistrates' Court. Not only it provides a better chance to appeal, but also a lost case would not mean paying considerable prosecution costs.

Another consideration for the client is the legal aid he may be able to receive, which depends on a number of factors. The rules are different for the Magistrates' and the Crown Court. There are two main criteria used to assess the eligibility – merits and means (Ministry of Justice, 2012). Merits means that legal aid will contribute to the "interest of justice".

Interest of justice is specified by "Widgery criteria" that include: a possibility of losing liberty, losing livelihood, potential damage to reputation, complexity of a case (Legal Aid Agency, 2014). The merits test is automatically "passed" for any cases in the Crown Court. However, it needs to be assessed for a case in the Magistrates Court. The other test is means test. It is understood as whether a person has funds to pay for their legal representation. It includes two factors: annual disposable income and disposable capital. According to our knowledge, the client earns £12,000 per annum, which would meet a criterium for annual income. It is required that for a case in both the Crown and the Magistrates' Court, a person earning less than £12,475 would need to pass an additional assessment to meet the income criterium (Ministry of Justice, 2012). However, the second criterium – disposable capital – may disqualify the client from getting legal aid. The limit of disposable capital is set to £8,000. Since the client inherited £50,000 recently, he may still be in hold of an amount exceeding this threshold. It means that he would not qualify for legal aid (Legal Aid Agency, 2014a).

The client should be also advised about pleading guilty and how it may affect the sentence. According to our knowledge, William does not plan to plead guilty at the first hearing, claiming not to be guilty of the offences he has been charged with. If he pleaded guilty on the first hearing, the trial would not need to take place and he would be sentenced on the same or a later hearing (Kessling, n.d.).

A guilty plea at the first hearing may reduce a sentence up to one third (Sentencing Council, 2017). If it is done later during the trial, it will be a smaller reduction. If William does not consider pleading guilty, but it becomes likely that he will be sentenced, he should present mitigating factors. One of the factors to include would be his good reputation, service in the armed forces, the fact that he has not been convicted before. Also, he could present the reasons that drove him to a theft. It could be the fact that his annual income was relatively low.

In summary, I have provided an overview of the advice that William may be given regarding his criminal case. I believe that points provided in this memorandum will be useful for providing him with the legal advice.

Bibliography

Cestaro, J., 2019. *Categories of criminal offences in the UK: Summary, Either Way & Indictable Only*. [Online]

Available at: <https://www.lawtonslaw.co.uk/resources/categories-of-offences/>
[Accessed 13 5 2021].

Defence Barrister, n.d. *Will my case go to the Magistrates' Court or Crown Court?*. [Online]

Available at: <https://www.defence-barrister.co.uk/which-court-will-i-go-to>
[Accessed 13 5 2021].

Kessling, C., n.d. *Pleading guilty*. [Online]

Available at: <https://www.defence-barrister.co.uk/is-it-ever-worth-pleading-guilty/>
[Accessed 13 5 2021].

Kessling, C., n.d. *Should I elect trial by jury?*. [Online]

Available at: <https://www.defence-barrister.co.uk/should-i-elect-trial-by-jury>
[Accessed 12 5 2021].

Legal Aid Agency, 2014a. *Civil legal aid: means testing*. [Online]

Available at: <https://www.gov.uk/guidance/civil-legal-aid-means-testing>
[Accessed 12 5 2021].

Legal Aid Agency, 2014. *Work out who qualifies for criminal legal aid*. [Online]

Available at: <https://www.gov.uk/guidance/work-out-who-qualifies-for-criminal-legal-aid>
[Accessed 12 5 2021].

Malley, C., 2018. *Employee Theft Complete Guide for UK Employers*. [Online]

Available at: <https://www.wirehouse-es.com/advice/employment-law/employee-theft/>
[Accessed 13 5 2021].

Ministry of Justice, 2012. *The Current Legal Aid Financial Eligibility Rules – Summary*. [Online]

Available at: https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting_documents/annexsummaryofcurrentlegalaiddfinancialeligibilityrules.pdf
[Accessed 12 5 2021].

Parliament of the United Kingdom, 1968. *Theft Act 1968*. [Online]
Available at: <https://www.legislation.gov.uk/ukpga/1968/60/section/1>
[Accessed 13 5 2021].

Parliament of the United Kingdom, 1968. *Theft Act 1968 Section 1*. [Online]
Available at: <https://www.legislation.gov.uk/ukpga/1968/60/section/1>
[Accessed 13 5 2021].

Parliament of the United Kingdom, 1980. *Magistrates' Courts Act 1980*. [Online]
Available at: <https://www.legislation.gov.uk/ukpga/1980/43/section/19>
[Accessed 13 5 2021].

Parliament of the United Kingdom, 2009. *Coroners and Justice Act*. [Online]
Available at: <https://www.legislation.gov.uk/ukpga/2009/25/section/122>
[Accessed 12 5 2021].

Sentencing Council, 2016. *Theft - general*. [Online]
Available at: <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/theft-general/>
[Accessed 13 5 2021].

Sentencing Council, 2017. *Reduction in sentence for a guilty plea - first hearing on or after 1 June 2017*. [Online]
Available at: <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>
[Accessed 13 5 2021].

Studyrocket, 2019. *Actus Reus and Mens Rea*. [Online]
Available at: <https://studyrocket.co.uk/revision/a-level-law-aqa/criminal-law/actus-reus-and-mens-re>
[Accessed 13 5 2021].

The Crown Prosecution Service, 2020. *Service Annual Report and Accounts 2019–20*. [Online]
Available at: <https://www.cps.gov.uk/annual-report-accounts-2019-20>
[Accessed 13 5 2021].