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Welcome to this newsletter which aims to provide you with interesting news and useful information on money laundering and related topics.

DEAD END COLLEGE

The Middlesbrough based National Distance Learning College collapsed in November 2001. There followed a six year investigation by Cleveland Police - one of the biggest investigations ever mounted by them.

Over the past four months the college's leading light, Mr Michael Smallman, and his wife Angela have been on trial at Teesside Crown Court facing charges of fraudulent trading and money laundering.

This week Mr Smallman was found guilty on three charges of fraudulent trading in relation to a total of over £15 million in student fees and government grants and one charge of money laundering under section 327 Proceeds of Crime Act 2002. Mrs Smallman was found guilty on one money laundering charge under section 328 and a further three charges under section 329 PoCA 2002.

It had been alleged that Mr Smallman spent millions of pounds of company money on his passion for gambling and buying and training expensive racehorses. He told the court that he believed the use of company money to buy racehorses was honourable corporate branding and effective marketing.

Two other directors of the company, the managing director and finance director, had also been charged with fraudulent trading but were acquitted.

After the verdicts Michael Smallman said: "We will fight on and hope we come up smelling of roses ... there are lots of grounds for appeal. We are innocent. I fight on and will continue to do so. All I did was take 400 to 500 people off the dole and we are being persecuted for it. Watch this space. My head is held high, and so is my wife's. There is nothing the judge can do apart from send me to prison. He cannot take my dignity or my belief away."

Mr and Mrs Smallman will be sentenced next month and are likely also to face confiscation proceedings.

There has been some debate about the suitability of jury trials in complex fraud cases. It seems in this case the jury, having heard evidence over several months, were able to decide that Mr Smallman had been proven to be dishonest but the managing director and finance director had not. Whilst there will be

those who might feel the jury reached the wrong decision in relation to some of the accused, at least we know that the jury found themselves able to reach a conclusion regarding the guilt or innocence of each defendant.

CONFISCATION IN ENGLAND AND IN SCOTLAND

The Proceeds of Crime Act 2002 provides confiscation legislation, in very similar terms, in both England and Scotland.

I have been discussing with my friend David Adamson, a forensic accountant based in Edinburgh, how the offender's 'benefit' is computed in practice North and South of the Border. Surprisingly, the approach of prosecutors in the two legal jurisdictions is quite different in 'criminal lifestyle' cases.

Essentially an English prosecutor will closely follow the wording of PoCA 2002, identifying firstly the 'benefit' of the offence of which the defendant has been convicted, then working in turn through each of the statutory assumptions of s10. The prosecutor's approach will be straightforward and, one might say, unsophisticated. He will look, for example, at each deposit in the defendant's bank accounts and ask himself whether that deposit ought to be assumed to represent proceeds of crime.

A Scottish prosecutor, on the other hand, will embark upon an accountancy exercise preparing what are, in effect, personal annual Balance Sheets for the accused and comparing his increase (or decrease) in wealth with his legitimate income and his expenditure. The accused's benefit from crime in any given year will be calculated as his increase in wealth plus his expenditure (excluding expenditure on any assets included in his wealth) less his legitimate income. A component of the accused's expenditure is his day-to-day living expenditure which is estimated on the basis of national household expenditure statistics. The accused's increase in wealth here refers to increases arising from the acquisition of assets - but excludes increases arising merely from an increase in the valuation of assets already held.

These two approaches can produce very different results based upon identical facts.

There are also significant differences in the treatment of certain specific items, such as drugs found in the possession of a courier.

My own view is that both approaches are flawed and that prosecutors' computations are prone to error both in England and in Scotland.

TAX EVASION PROSECUTED IN THE CROWN COURT

I was recently involved in a Crown Court case of tax evasion and tax credit fraud. The defendant had been trading for several years but had failed to notify HMR&C. In some years he had been in receipt of tax credits.

Two features of HMR&C's handling of the case struck me. Firstly they had calculated the tax evaded on the basis that virtually every deposit into the defendant's bank accounts had been trading income. Certain major deposits were CHAPS payments from solicitors but the undeclared business could not conceivably generate deposits of this nature (which proved on closer examination to be re-mortgage advances). In consequence the prosecutor's figure of tax evaded was vastly overstated - and quite obviously so. Had this error not been made the case might not have been selected for prosecution in the Crown Court.

Secondly both prosecution and defence instructed expert witnesses. I was instructed by the defence. The prosecution instructed as their expert another employee of HMR&C. As an expert is required to take an independent view this choice was somewhat controversial. It also placed the individual expert in some difficulty when he found the prosecution figures insupportable.

Ultimately the defendant pleaded guilty to a much reduced figure of evasion after having been assured by the judge that he would not face an immediate term of imprisonment based on that lower figure. So the Revenue got their man. But I was left with the feeling that they could have handled this case much better.

EMPLOYMENT OF ILLEGAL IMMIGRANTS

The Court of Appeal delivered an interesting judgment this month regarding the 'benefit' arising in relation to the employment of illegal immigrants. A restaurant employed 12 staff including, over an identified period, three illegal immigrants. Following prosecution of the restaurant it continued to trade, but without employing any illegal immigrants.

In confiscation proceedings the question arose as to what 'benefit' had been derived from the employment of the illegal immigrants.

The Court of Appeal said this, "The position adopted by the appellants below was that if the court concluded that there was benefit to them from the employment of the illegal immigrants the court should simply assess it as a proportion of turnover. This was not a helpful approach. If the appellants had been more forthcoming and shown the real part played in the business by these three employees they might have been able to show that the true benefit was relatively modest, but they did not do so. In those circumstances, they cannot reasonably complain if the court takes a robust approach in inferring as a matter of fact that they did make a significant difference to the amount of the receipts. It is impossible for us to carry out a scientific exercise, but, absent any better basis for assessing the benefit, we have come to the conclusion that since the three employees, none of them employed in particularly high positions, were nevertheless a quarter of the work force, it should be inferred that a quarter of the receipts of the business over the relevant period came from their employment."

There seems to be a broad hint there that, another time, efforts should be made to establish the particular contribution of the employees in question.

AS SEEN ON TV

Last week I appeared on TV in a documentary concerning a collection of companies which had promised much but delivered little.

It is not the first time I have appeared on TV and I do enjoy being interviewed, but I was struck once again by the visual nature of television and how that can, perhaps, get in the way of a meaty documentary.

The interview was filmed in a spare office at the BBC's Newcastle studios. The producer had thoughtfully spread a multi-coloured collection of files across 'my' desk and borrowed some makeup from one of the newscasters so that my bald pate would not shine too much on screen.

Even so it was no surprise that, in the broadcast programme, the blonde single mum who's tribunal award for unfair dismissal had not been paid by her ex-employer received rather more airtime than my forensic examination of the companies' accounts!

If you require any assistance or have any queries concerning issues related to forensic accountancy, proceeds of crime or money laundering contact d.winch@AccountingEvidence.com or visit our website www.AccountingEvidence.com.

Kind regards

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