

July 2009

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

PARLIAMENTARY STANDARDS ACT 2009

The new law to ensure that Members of Parliament behave scrupulously honestly with regard to their expenses claims has now received the Royal Assent. But it was rather scythed down in its passage through the two Houses of Parliament. Amendments made to the original Bill have resulted in an Act which specifically does not apply to members of the House of Lords.

A legally binding code of conduct also bit the dust along the way. So did any suggestion that what MPs say in the Commons might be used as evidence in court.

A statutory ban on MPs acting as paid advocates has also fallen on stony ground and did not survive long enough to become part of the Act.

To cap it all, the investigation and enforcement provisions in the Act will automatically cease to have effect after they have been in force for two years - unless Parliament decides to renew them or replace them with new legislation.

Surely MPs cannot be expecting to quietly let these powers die off after the next election?

HOUSE OF LORDS COMMITTEE REPORTS

A House of Lords committee report on "Money Laundering and the Financing of Terrorism" has been published this month. It contains some gems.

A representative of the British Bankers' Association told the committee that one bank alone incurred costs of £36 million annually in complying with the Money Laundering Regulations. Ms Scutt of the BBA also said, "If the banks actually reported, as they were required to, according to the law under the consent regime SOCA would be completely swamped . . . and the whole system would grind to a halt". Instead she said, "We have a sort of agreement with SOCA on

how we proceed". It seems the banks apply what, by common consent, the law *ought* to say rather than what it does say!

The Committee recommends that the Proceeds of Crime Act 2002 should be amended and that consideration be given to introducing a *de minimis* exclusion from the obligation to report suspicions relating to minor criminal offences.

Will that happen? Don't hold your breath!

IN THE ENGLISH AND SCOTTISH COURTS

There have been a couple of interesting decisions in the English and Scottish courts this month. Each of them requires a bit of explanation - but please bear with me!

In Scotland HM Customs had been maintaining surveillance on a travel agents and money transmitters in Glasgow known as Makkah Travel. They observed that the premises were visited a number of times by a Mr Gurie. He and, on occasions, others were seen to enter the premises carrying bulky holdalls and leave without them.

Customs officers also saw Mr Ahmad carrying large amounts of cash to his local bank. Mr Ahmad was a director of, and 50% shareholder in, Makkah Travel. Customs' officers swooped on various premises and found large amounts of cash, some of it in holdalls.

Mr Gurie and Mr Ahmad were arrested and charged with money laundering. Mr Ahmad, being a person working in the 'regulated sector' and subject to the Money Laundering Regulations was also charged with failing to report a suspicion of money laundering as required by section 330 Proceeds of Crime Act 2002.

No doubt to the chagrin of Customs, when the matter came to court Mr Gurie was not found guilty of any offence. However Mr Ahmad was convicted of money laundering charges under sections 327 and 329 and of the offence of failing to report a suspicion of money laundering by Mr Gurie.

Mr Ahmad appealed against his conviction under section 330 on the ground that he could not properly be convicted of failing to report a suspicion of money laundering by someone who, in the event, had been found not to be guilty of that very offence.

The Scottish appeal court were not impressed by that argument and upheld the conviction. They said, "As a matter of language it is obvious that a person may suspect that something is taking place, albeit it later turns out that his suspicion is ill-founded".

They also held, "There is nothing in the language of section 330(2) which states or requires that money laundering is in fact taking place. It is plain that the

obligation thereunder can arise if a person suspects or has reasonable cause for suspecting that it is".

This is a somewhat controversial decision. The case is **Her Majesty's Advocate v Ahmed [2009] ScotHC HCJAC 60.**

An English Court of Appeal decision this month dealt with the not unusual situation of a lady in receipt of social security benefits who is found to be co-habiting with a domestic partner who is employed. Nicola Tilley was charged with making false representations to obtain benefits and with failing to disclose a change in circumstances affecting her entitlement to benefit - namely that she was living with Christopher Tilley.

The interesting feature of this case was that Mr Tilley was charged with "dishonestly causing or allowing" Nicola Tilley to fail to give prompt notification of her change in circumstances. His alleged offence fell under section 111A(1B) Social Security Administration Act 1992, as amended by the Social Security Fraud Act 2001. But before the evidence against him could be put before a jury, the Recorder ruled that Mr Tilley had done nothing which could be construed as "causing or allowing" Nicola Tilley's failure to notify the benefit authority that she was living with Mr Tilley as man and wife.

The prosecution appealed against that ruling. In the Court of Appeal the argument turned on the meaning of "allow" and, because Christopher Tilley had not taken any action in relation to Nicola Tilley's failure, and because Nicola Tilley was (obviously) just as aware as he was that they were living together, the Court of Appeal agreed with the Recorder that he had not done anything which amounted to "causing or allowing" her failure to notify. Indeed the Court of Appeal were at a loss to know what it was the legislation envisaged that Mr Tilley ought to have done in the circumstances.

The position will be different where, say, a man knows something that the woman does not and fails to pass that information on to her, with the result that she cannot report the relevant change of circumstances (because she is unaware of it). This could apply, for example, where a man increases his working hours or income from employment - unknown to the claimant.

But that was not the position here. Mr Tilley could not compel Nicola Tilley to inform the benefit authority and he was under no obligation to inform them himself. Mr Tilley had not been active in any way in Nicola Tilley's failure to report her change in circumstances. So that was that. The case is **R v Tilley [2009] EWCA Crim 1426.**

Lawyers among you will be interested to note that the Court of Appeal considered "allow" to be, in this context, a word whose meaning was not immediately clear. However the Court did not consider that it would be proper to widen the meaning of the word by reference to Hansard. The Court of Appeal was however prepared to look to Hansard to ***narrow*** the meaning of the word in favour of the defendant. This is an intriguing use of the principle derived from **Pepper v Hart** in a criminal law context.

MY WIFE HATES SAT-NAV!

For accountants among you, the website AccountingWEB www.accountingweb.co.uk has recently been redesigned and now boasts a 'Discussion Group' on money laundering and crime, which I administer. On there you will find an article 'Sat-Nav and the MLR' dealing, in a slightly tongue in cheek fashion, with the similarities between Sat-Nav and ongoing compliance with the Money Laundering Regulations.

I'M SURE THERE WAS A BANK HERE YESTERDAY

Bank depositors at the Visa Finance Bank at Malaba, Uganda were more than a little surprised and taken aback to find that the bank had disappeared overnight. It seems that scammers rented premises in the town, set them up as a bank branch, took over \$100,000 in deposits - then vanished.

The villains even removed the landlord's fans and carpets from the building when they left. Of course it could never happen here . . . could it?

AUGUST BREAK

As usual we shall be taking a well earned break in August. The next issue will be in September. Enjoy the holiday!

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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