

December 2009

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

A BARNSTORMING DECADE

Well, as the 'Noughties' draw to a close we can reflect on a barnstorming decade for financial crime. It kicked off with Enron in 2001 (and the rapid demise of Arthur Andersen - remember them?). It moved through carousel VAT frauds involving mind boggling amounts of money, and it finished with Bernie Madoff's record breaking Ponzi scheme.

It could even be said that crime, in the form of mortgage fraud, played its part in the sub-prime bank crisis which has triggered the deepest recession since the 1930s.

For those of us involved in the criminal justice system in the UK the advent of the Proceeds of Crime Act 2002 and the ever-increasing emphasis on cash seizures and confiscation has changed the face of criminal court practice over this decade.

One wonders what the next decade will bring!

BRIBERY AND CORRUPTION

One safe bet for the coming decade is new legislation on bribery and corruption.

A new Bill, the Bribery Bill, has been introduced following the Queen's Speech and received its second reading in the House of Lords on 9 December. The Committee stage is scheduled to begin on 7 January. It remains to be seen, of course, whether this Bill will complete all its stages and receive Royal Assent before the general election.

Broadly speaking the Bill is designed to replace the current legislation, the bulk of which was enacted between 1889 and 1916, and common-law offences, bringing in a single code covering bribery offences in the public and private sectors both in the UK and overseas.

The Bill introduces two general offences. The first covers the offering, promising or giving of an advantage (broadly, offences of bribing another person). The second deals with the requesting, agreeing to receive or accepting of an advantage (broadly, offences of being bribed). The formulation of these two offences abandons the agent/principal relationship on which the current law is based in favour of a model based on an intention to induce improper conduct. The Bill also creates a discrete offence of bribery of a foreign public official and a new offence where a commercial organisation fails to prevent bribery.

Enactment of this legislation would also serve to satisfy longstanding UK obligations under international treaties.

It is interesting to note that the Serious Fraud Office has recently launched a prosecution of a British executive, under the existing legislation, in a case of alleged foreign bribery relating to a subsidiary of the Johnson & Johnson group of companies. It is alleged that Greek health officials were bribed to buy orthopaedic equipment and other medical devices. One to watch in 2010!

IN THE COURTS

There have been a couple of notable court cases recently relating to evidence of expert witnesses - or lack of such evidence.

Businessman Philip Bowles was sentenced to 3½ years imprisonment at Oxford Crown Court this month for VAT fraud, despite the sentencing judge's apparent concern that he may have been wrongly convicted. The problem was that, at the time of his trial before a jury, no forensic accountancy evidence could be produced by the defence. The reason for this was that the Legal Services Commission had refused funding for a forensic accountant's report, on the basis that none was necessary, and the defendant could not pay for one himself because his own funds were frozen under a court order.

Between the delivery of the jury's verdict and the sentencing however a forensic accountant (not me, I hasten to add) had produced a report, free of charge. In the opinion of the forensic accountant no VAT had been underpaid - indeed a refund of VAT was due based upon a correct application of VAT law. If that is correct it seems improbable that Mr Bowles could be guilty of VAT fraud. Hence the judge's concern when giving effect to the guilty verdict.

Cases being heard without relevant expert evidence, as here, are something which might be expected to occur more frequently in future, as the Ministry of Justice is currently seeking a 20% reduction in legal aid expenditure on expert witnesses.

In contrast, in the case of R v Meachen expert evidence (in this case expert medical evidence) had been given at trial by an expert instructed by the defence. The jury however convicted Mr Meachen. On his appeal Mr Meachen's legal representatives invited the Court of Appeal to hear fresh evidence from a different medical expert. The Court declined to hear this on the ground that it was not fresh evidence at all, it was essentially the same evidence as had been heard by the jury, but now from a different (and hopefully more persuasive) expert.

The Court of Appeal considered that admitting such evidence would subvert the original trial, holding that "admitting such evidence would not afford any ground for allowing the appeal, because the jury by their verdict have already surely rejected the essence of this supposedly fresh evidence".

A hearing in the Court of Appeal is not to be used as an opportunity to make a better attempt to run a defence second time around.

NOT "BEYOND ALL REASONABLE DOUBT" PLEASE

We are all familiar with that dramatic moment, on TV and in movies, at which the judge bangs his gavel and solemnly intones, "Members of the jury before you can reach a guilty verdict you must be satisfied that the prosecution has proved its case beyond all reasonable doubt".

The truth is not quite so colourful. Judges in English criminal courts have never had gavels to bang, and for many years now they have been advised to avoid any mention of "reasonable doubt" in their directions to the jury.

But in a case at Reading Crown Court last December the judge had indeed said to the jury, "You must be satisfied of guilt beyond all reasonable doubt". When that was queried by counsel he said that was his customary direction and had never been subject to appeal.

Now it has. The jury had convicted the defendant, Mr Majid, but he appealed on the basis that the judge had mis-directed the jury. The Court of Appeal, whilst upholding the conviction, made clear their unhappiness about the judge's remark.

The correct wording, if you were wondering, is for the judge to instruct the jury, "If after considering all the evidence you are sure that the defendant is guilty, you must return a verdict of 'Guilty'. If you are not sure, your verdict must be 'Not Guilty'".

I think I prefer the TV version!

ACCOUNTING EVIDENCE WEBSITE

I have completed some further updating of my forensic accountancy firm's website at www.AccountingEvidence.com.

As well as new articles, case studies, FAQs, a Quick Query form and - of course - copies of previous issues of this newsletter, there is now a link enabling you to follow me on Twitter. Or, if you prefer, just go to twitter.com/david_winch.

NOT FROM SANTA

Carlisle Crown Court this month heard a slightly surprising tale from a man and wife accused of possession of heroin with intent to supply. The home of Ian and Tracey Sealby was searched by police on 23 December last year. The police found a parcel containing half a kilogram of heroin hidden in a cardboard box under a teddy bear on top of a wardrobe.

Mr Sealby explained that he thought this was a Christmas present.

Clearly the jury did not share his Christmas spirit. They returned guilty verdicts on both defendants.

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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Accounting Evidence Ltd are forensic accountants specialising in crime including theft, fraud, duty evasion, money laundering, Companies Act offences, and other criminal cases and related disqualification and confiscation proceedings. We are happy to undertake an initial review of any case on a no cost and no obligation basis.

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