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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.

JURIES IN ENGLISH CROWN COURTS

In the United States it is common, after the conclusion of a high profile criminal case, for jurors to be seen on TV explaining why they reached the verdict which they have - what they found important and convincing and what left them cold.

That doesn't happen in the UK. In fact the Contempt of Court Act 1981 makes the giving of such interviews illegal. But that legislation is also said to have prevented genuine and important research in this country about how juries reach their verdicts.

Now a study, sponsored by the Ministry of Justice, has sought to explode some of the myths. The research was carefully planned to avoid asking actual jury members about their deliberations in the jury room (which would be illegal) but did ask them about how they were affected by other factors. They were asked, for example, about whether they had seen coverage of their cases on TV and in newspapers, or on the internet.

The study also examined the outcome of every charge considered in Crown Courts in England & Wales over an 18 month period (October 2006 to March 2008), and produced some fascinating statistical analyses of these.

Finally the researchers showed 41 'real' juries (people selected in the normal way for jury service) a film of a simulated case and asked them to deliver a verdict. Because this was a simulated case the 'jury' could be studied in the course of their deliberations and questioned about their understanding of the issues.

It may come as a surprise to learn that of the 551,669 charges in Crown Courts over the 18 months studied, only 68,874 went before a jury. That's about one in eight of the charges.

The main reasons for this are that two-thirds of charges result in a guilty plea and that in many cases criminal proceedings are concluded by way of compromise. A defendant, say, charged with several offences, might plead guilty to some but not others (which then are not pursued) - or might offer to plead guilty to new, less serious, charges. That way the defendant can get a double benefit of facing a less serious charge and getting a mitigated penalty even for that lesser charge because of his admission of guilt.

Of the 68,874 charges decided by a jury there were 43,760 verdicts of 'guilty'. That's nearly two-thirds.

The study found no evidence of racial bias in the decisions of juries, and no evidence to suggest that juries in some courts were excessively prone to deliver 'not guilty' verdicts.

It did find however that jurors had some difficulty grasping the difference between points of law and points of fact and that they might be helped by being provided with a brief (say one page) note of the key points of law relevant to the case with which they were dealing. At present jurors are often not given any written information about the relevant law.

The full study report can be downloaded at bit.ly/aUJmHW

CASH FORFEITURE UNDER POCA 2002 AND THE BILL OF RIGHTS 1689

The Bill of Rights of 1689 is in the news because MPs charged with false accounting in relation to their expenses have suggested that their claims are 'proceedings' of Parliament and therefore not subject to question in the criminal courts.

But the Bill of Rights also says "*That all Grants and Promises of Fines and Forfeitures of particular persons before Conviction are illegall and void*". Does this, ask some lawyers, invalidate the forfeiture of cash under Part 5 of the Proceeds of Crime Act 2002?

As far as I am aware that point has never been argued before a Magistrates' Court, where cash forfeitures are dealt with. So no-one can say what the court might decide.

A possible difficulty is that this provision in the Bill of Rights seems to have been directed specifically against action by the late King James II "*by the Assistance of diverse evill Councillors Judges and Ministers employed by him*" itemised in the Bill "*And severall Grants and Promises made of Fines and Forfeitures before any Conviction or Judgement against the Persons upon whome the same were to be levyed. All which are utterly directly contrary to the knowne Lawes and Statutes and Freedome of this Realme*".

The authors of the Bill of Rights did not apparently have it in mind to void forfeiture under statute law and following judicial process. But I would love to see someone argue the point in court.

IN THE COURTS

One feels some sympathy for Mr Shah, a wealthy international businessman who is suing HSBC. In September 2006 and again in February 2007 HSBC did not

promptly transfer money from Mr Shah's bank account when instructed by him. The reason was that the bank had made a Suspicious Activity Report and was awaiting consent from SOCA (which duly arrived).

But Mr Shah claims that in consequence of HSBC's apparent concern another bank became worried that he may be unreliable or worse, and rumours spread which led ultimately to the government of Zimbabwe seizing assets of his, causing him losses valued at US \$300 million.

Mr Shah is understandably miffed and would like HSBC to pay him compensation. HSBC, equally understandably, would rather not cough up. Mr Shah's claim was considered by the High Court who were unsympathetic. Mr Shah appealed to the Court of Appeal [2010] EWCA Civ 31

The Court of Appeal noted that there was no obligation upon the bank that it should have "reasonable grounds" for its suspicion before making a Suspicious Activity Report under s330 PoCA 2002. But it was necessary that the bank actually did suspect and, furthermore, it was necessary that the suspicion held by the bank was a suspicion of money laundering.

The bank had not, as yet, been required by any court to deal with these points and so the Court of Appeal considered that Mr Shah's claim should go to trial (in a lower court) for these matters to be addressed.

A money laundering issue will only arise where a person has possession, or some other involvement with, the benefit of an earlier crime. Accountants in particular are sometimes concerned that an obligation to report has arisen where, for example, a client has poor accounting records. But the obligation to report is only triggered after a benefit from crime (such as the evasion of a tax liability) has come into existence.

Also this month the Court of Appeal announced its decision regarding a particularly fishy business. Ian Perkes is a fish merchant who failed to submit sales notes and landing declarations in respect of certain purchases of fish that he made on 5 occasions. He was fined £2,000 for that, but the prosecution also sought a confiscation order in the sum of £950,000 based on cash purchases of fish made over the 6 years prior to the offences.

Having heard evidence in the confiscation proceedings the judge encouraged both counsel to negotiate a compromise lest he be forced to make an order which would effectively put Mr Perkes out of business. After discussion a confiscation order was made in the sum of £188,195.

Notwithstanding the order was arguably made by consent, Mr Perkes appealed against it. In part his appeal was on the basis that his lawyers had not properly advised him of the draconian nature of the confiscation proceedings and he was unprepared for the evidential burden upon him to rebut the statutory assumptions.

The Court of Appeal had some sympathy with Mr Perkes, feeling that there was an arguable case that his legal team had not made him fully aware of the difficulties he faced. But the Court considered that the confiscation proceedings, though tough, were not unfair and that the judge had taken a humane course leading to the order which he had made. Mr Perkes' appeal was dismissed [2010] EWCA Crim 101

JOAN THE LOAN 'RETIRED' BY CROWN COURT JUDGE

A 78 year old unlicensed money lender, known as 'Joan the Loan', has been 'retired' by a judge at Bristol Crown Court. No longer will she be lending money and hanging onto borrowers' benefit cards and pin numbers to secure repayments.

Joan Fionda is reported to be in need of a hip replacement and won't be going to prison. But she will be subject to confiscation proceedings following an investigation by the South-West Illegal Money-lending Team.

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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