

June 2010

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

## **FSA IMPOSES RECORD FINE**

The Financial Services Authority has imposed a record fine of £33.32 million on J P Morgan Securities Ltd for failing to keep client money in a separate trust account.

The error had gone undetected from November 2002 to July 2009 and related to fluctuating amounts of client money of up to US \$23 billion. Had the firm become insolvent at any time in this period the client money would have been at risk of loss.

The fine represents 1% of the average balance of client funds involved. When the error was discovered J P Morgan self-reported the matter to the FSA and the penalty was reduced to reflect this.

## **MEANS TESTING OF DEFENCE COSTS IN CROWN COURT CASES**

Until recently a defendant facing criminal proceedings in the Crown Court in England & Wales could expect his defence legal costs to be met from government funds. In other words the services of a solicitor and barrister (if appropriate) were available free of cost to the defendant. That is no longer necessarily the case.

Means testing for defence costs in Crown Court cases has already been introduced in most regions of England and Wales, and will be introduced in the remaining areas, South East England and London, later this month.

The effect is that the income and financial circumstances of the defendant's household will be assessed when he applies for legal representation and, if his household's disposable income is above a threshold, he will be required to pay a monthly contribution towards his anticipated defence costs. These monthly contributions will be payable **before** the defendant's case comes to court, but will be refunded if he is acquitted.

If he pleads guilty or is found guilty at trial, a further lump sum contribution towards his defence costs may then be required.

The required contributions can (depending upon the financial position of the defendant's household and the complexities of the case) be substantial, in extreme cases they may even run into six figures. So this could be a matter of considerable importance to defendants in future.

The required contributions will be in addition to any penalty imposed by the court on conviction.

### **500 EURO NOTE WITHDRAWN FROM SALE**

The 500 Euro note has been withdrawn from sale in the UK.

The note, worth over £400 at current rates, was preferred by criminals wanting to handle and transport large amounts in cash. Indeed in SOCA's estimation "more than 90% of the 500 Euro notes that are provided in the UK have actually gone into the hands of serious organised criminals".

One small bureau de change, suspected of involvement in money laundering, actually requested in one year more 500 Euro notes than had the entire 12,500 branch national network of Post Offices.

There still remains the 1,000 Swiss Franc banknote (worth almost £600) but this, of course, is not so easy to use.

### **IN THE COURTS**

The case of R v Innospec Ltd deserves detailed consideration because of its implications for 'plea bargains' in English cases. Innospec Ltd is a company registered in England which is a wholly owned subsidiary of Innospec Inc, registered in the US State of Delaware. Even so the executive offices of the US company were actually to be found in Cheshire, England.

The companies supplied a chemical compound, tetra-ethyl lead (TEL), to Indonesia where it was used as a fuel additive (chiefly in 'leaded' petrol). The use of TEL had been banned in many other countries for health and environmental reasons.

Over many years the companies bribed senior government officers with a view to ensuring the continuing sales of large quantities of TEL by the companies to Indonesia. The total sums used in bribes are estimated at US \$8 million.

US Government agencies began investigations in 2005 and in 2007 the UK Serious Fraud Office became involved. In 2008 the companies began

negotiations with the authorities in the US and UK to reach a global settlement to the investigation on the basis of a negotiated financial penalty and a period of independent compliance monitoring. In December 2009 agreement was reached on how much the companies would pay. It was then for the authorities in the US and the UK to decide how that amount should be split between them.

Once that had been agreed it was necessary to seek approval of the arrangements from the courts on both sides of the Atlantic. As a result a hearing came to be held in the UK in March this year.

In effect the court was faced with a *fait accompli* and had no option but to rubber stamp the agreed settlement. But the judgment of Lord Justice Thomas in Southwark Crown Court notes that, under different circumstances, he would regard the agreed settlement payable to the UK authorities of the sterling equivalent of US \$12.7 million as "wholly inadequate as a fine to reflect the criminality displayed". A fine of "tens of millions" would be appropriate, he said.

Furthermore, he made clear that in future "this court must and will sentence in the way set out in the law". The case is reported as [2010] EW Misc 7 (EWCC)

The case of investment road-show fraudster Kevin Foster is much more straightforward. He had collected £34 million from investors between 2001 and 2004 by a variety of activities, some involving gambling systems, others network marketing schemes. One of the most well known betting schemes was "KF Concept" and a network marketing scheme was known as "Planline". It is believed that up to £12 million was invested in "Planline" but less than £2,000 was returned.

After a seven week trial at Harrow Crown Court Mr Foster was convicted in March 2010 and sentenced to 10 years imprisonment.

The case of R v Robert Dougall deals with the thorny issue of the appropriate sentence for a person who co-operates with the authorities under section 73 of the Serious Organised Crime and Police Act 2005. Again the case involved international corruption on a large scale, in this case related to the sale of medical appliances (such as prosthetic limbs) in Greece.

Mr Dougall admitted his role in the corruption and offered to assist the Serious Fraud Office with information and evidence useful to them in completing their investigations.

A plea agreement was concluded between the defendant and the SFO. But that agreement went further than it should have done by advocating that Mr Dougall receive a suspended sentence.

In the event however, having fully considered the facts of Mr Dougall's case, the Court was able to impose a suspended sentence of 12 months imprisonment. The case is reported at [2010] EWCA Crim 1048.

There have also been a number of significant confiscation and proceeds of crime cases recently. These will be covered in a separate newsletter.

## **REPUBLIC OF IRELAND UPDATES MONEY LAUNDERING LEGISLATION**

The EU Third Directive on Money Laundering was incorporated into UK legislation by the Money Laundering Regulations 2007.

In May this year similar legislation went into the statute book in the Republic of Ireland as the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. This replaces earlier legislation contained in a 1994 Act and subsequent amendments.

The new legislation is expected to come fully into effect in July.

## **TRADING STANDARDS TO THE FORE**

An investigation by Trading Standards resulted in the uncovering of the biggest counterfeit goods operation ever seen on EBay. The scam involved the sale of fake branded golf clubs and associated goods, which had actually been manufactured in China.

More than US \$3 million was taken between 2003 and 2008 for the fake merchandise - six tons of which had been imported into the UK alone. Fake goods were also delivered to the United States, Australia, Ireland, Germany, Italy, France, Canada, the Netherlands, Brazil and New Zealand.

Gary Bellchambers and six co-defendants were convicted of conspiracy. He was sentenced to four years and three months imprisonment.

## **ARMED POLICE GUARD FOR A VICTORIA SPONGE**

The past week has seen horrific shootings in Cumbria where I live. But on a lighter note last Wednesday was also my mother-in-law's 86th birthday.

My wife had made a cake, a Victoria sponge filled with cream and jam, and she set off to deliver it.

Thirty yards short of her destination she was stopped by armed police, pumped up and ready to deal with a crazed gunman on the loose. My wife was told she could go no further.

She produced the cake and explained to the officer her mission to deliver it.

It is no small credit to the armed officer that - no doubt faced with the most difficult and dangerous day of his career - he retained the humanity and sensitivity to escort my wife, with the cake, safely to her mother's door.

Aren't British Police wonderful!

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](mailto:d.winch@AccountingEvidence.com) or visit our website [www.AccountingEvidence.com](http://www.AccountingEvidence.com).

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