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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.

MONEY LAUNDERING AND 'CRIMINAL PROPERTY'

Most readers will know that money laundering offences always involve the offender having some involvement with 'criminal property'. But what is 'criminal property'?

The first point is that, in this context, 'property' is any asset including money, tangible assets and intangible assets.

'Criminal property' however has to be property that, at least in part, constitutes or represents a benefit of someone's crime. But it can represent that benefit indirectly. So if I steal a car, sell the car for cash, then deposit that cash into my bank account (which already has some other money in it) then the whole of the money in that bank account represents, at least in part, and indirectly, the benefit of my crime of stealing the car.

But in order to be 'criminal property' in my hands it is also a legal requirement that I know, or at least suspect, that the property in question actually does constitute or represent a benefit of someone's crime.

Obviously if I have myself stolen the car, sold it and banked the proceeds then I do know that - so that balance in my bank account is 'criminal property' as far as I am concerned.

With me so far?

Suppose the bank account is held jointly with my wife, and she neither knows nor suspects that the money in the account is tainted by criminality. Then, as far as she is concerned, that money is not 'criminal property' (even though in fact the money has been generated by my crime).

Still OK? Good!

Now let's take a different example. Fred is chatting to Jim in the pub. Fred tells Jim that things are getting very difficult between him and his wife Freda. Fred thinks it may end in divorce. But Fred doesn't want Freda to get too much by way of a divorce settlement. So Fred asks Jim if he can 'give' Jim some of his

money to look after to conceal it from Freda, on the understanding that Jim will give it back to Fred once the divorce settlement has been finalised. Fred says he will let Jim keep 5% of the money as commission.

Now any lawyers reading this will immediately see that this is an illegal agreement, made with the shared intention of defrauding Freda.

But let's suppose Fred gives Jim £100,000 which Jim puts in his bank account. Have Fred and Jim entered into an arrangement which facilitates the acquisition, retention, use or control of 'criminal property' by Fred (which would mean that Jim was guilty of an offence under s328 Proceeds of Crime Act 2002)?

That in effect was the question the Court of Appeal had to answer in [R v Geary \[2010\] EWCA Crim 1925](#). The Court of Appeal said:

"The arrangement was to use lawfully acquired money in an unlawful way; it was not to deal with money that had been acquired unlawfully".

"In our view the natural and ordinary meaning of section 328(1) is that the arrangement to which it refers must be one which relates to property which is criminal property at the time when the arrangement begins to operate on it. To say that it extends to property which was originally legitimate but became criminal only as a result of carrying out the arrangement is to stretch the language of the section beyond its proper limits".

So Jim is not guilty of an offence under s328.

By the same logic, an offence under the other money laundering sections, ss327 & 329, can also only occur if the asset in question was 'criminal property' **before** the money laundering offence occurred.

There may be cases in which that is an important point to remember!

GOVERNMENT INITIATIVES

There is news of some new government initiatives relevant to financial crime.

There is to be a radical shake up of policing which will involve, amongst other things, the disappearance of SOCA and the emergence of a new National Crime Agency. The plan was recently outlined by the Home Secretary, Theresa May, and received wide coverage in the press.

Less coverage was given to the announcement by the Government Insolvency Service that, as part of its plans to cut costs, there would be some reduction in the number of investigations it would undertake over the coming years.

USE IN COURT OF INFORMATION OBTAINED UNLAWFULLY

It is not uncommon in divorce cases for allegations to be made that information is being concealed from the court. In what may have been an attempted pre-emptive strike, one wife's brother accessed a computer used by her husband and copied numerous files from it. In the case of [Tchenguz & Others v Imerman \[2010\] EWCA Civ 908](#) the Court of Appeal considered whether information such as this, obtained unlawfully, could be used in divorce proceedings.

The Court decided, in a nutshell, 'it depends'. The conclusion was more carefully, but less concisely, expressed by the Court in these terms:

"We consider that, in ancillary relief proceedings, while the court can admit such evidence, it has power to exclude it if unlawfully obtained, including power to exclude documents whose existence has only been established by unlawful means. In exercising that power, the court will be guided by what is "necessary for disposing fairly of the application for ancillary relief or for saving costs", and will take into account the importance of the evidence, "the conduct of the parties", and any other relevant factors, including the normal case management aspects. Ultimately, this requires the court to carry out a balancing exercise, something which, we are well aware, is easy to say in general terms but is often very difficult to effect in individual cases in practice".

So now you know!

NEW ON THE ACCOUNTING EVIDENCE LTD WEBSITE

I have recently added a couple of extra [case studies](#) 'John' and 'Keith' on to the website of my firm [Accounting Evidence Ltd](#).

The names and locations in these case studies have been changed to protect client confidentiality and some of the case studies are drawn from several cases merged together.

The case of 'John' concerns a businessman who was claiming tax credits but lived in a big house and owned a number of large and expensive looking vehicles.

HM Revenue and Customs started an investigation into John's tax returns and tax credit claims, and they discovered large amounts of funds being deposited into his bank accounts. Assuming these deposits to be business takings they prosecuted John for tax credit fraud and tax evasion over several years.

In fact the larger deposits proved to be remortgage advances obtained by John to meet his living and business expenses. Whilst his true income was more than the figures he had declared, it was nowhere near the figures which had been alleged.

Once HMRC accepted their figures were incorrect matters were resolved and John pleaded guilty to relatively minor offences for which he received a suspended sentence.

'Keith' had been convicted of being a 'loan shark' and was now subject to confiscation proceedings. It was alleged that he had 'hidden assets'. Following my investigation it was accepted that the only 'hidden assets' were those which the prosecution had already discovered and the terms of a confiscation order were agreed.

TOKYO'S OLDEST PENSIONER

In a bizarre case of benefit fraud it was recently discovered that Tokyo's 'oldest pensioner' had been dead for 30 years. His family had retained his mummified body unburied so that they could continue to claim his monthly pension.

The matter came to light when local dignitaries called on him to celebrate his exceptional longevity! Oops!

AN INTIMATE UNDERSTANDING OF FRAUD

An American forensic accountant sentenced to 8 years imprisonment for a US \$7 million fraud accepted his fate with some style recently.

Lewis B. Freeman, South Florida's best-known forensic accountant, spent his final moments of freedom saying goodbye to his family and stripping down to his jogging shorts before dozens of people in a Miami federal courtroom. His lawyer said he did not want the authorities to get hold of his expensive suit which the prosecutor claimed had been paid for with stolen funds.

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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