Financial Crime on i-law

July/August 2017 highlights – the best of i-law.com
Contents

Written by experts in financial crime and compliance, Financial Crime on i-law.com contains an unrivalled collection of news, analysis and international and English law case reports – a must-read for legal practitioners, money laundering reporting officers and compliance officers.

This booklet of extracts combines recent articles from Lloyd’s Law Reports: Financial Crime and Money Laundering Bulletin, as well as other sources on i-law.com, to provide a round-up of our must-see content from July and August 2017.

3  The Commissioners for Her Majesty’s Revenue and Customs v Jackson Grundy Ltd

Commonwealth Bank of Australia in court – Austrac alleges over 50,000 AML/CFT breaches
The Commonwealth Bank of Australia faces civil penalty proceedings in the Federal Court after Austrac, Australia’s financial intelligence unit and AML/CFT regulator, accused it of “serious and systematic non-compliance” with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.
Money Laundering Bulletin, August 2017

4  FCA’s latest push in the pensions sector
Transferring from a defined benefit pension to one without any safeguards, has historically been unlikely to be in a customer’s best interests, says the Financial Conduct Authority. Its recent consultation (CP17/16) aims to ensure consumers receive a thorough assessment of their needs and objectives, along with appropriate advice, when looking to give up valuable pension benefits.
Compliance Monitor, July 2017

Chocorek v District Court of Kielce, Poland

5  R v Morfitt
Confiscation — Criminal procedure — Benefit figure — Consent — Legal advice.

Fine prospects
Ten years on from the Financial Crisis prudential regulators may be breathing slightly easier but not so their colleagues in AML/CFT enforcement, as our new interactive Money Laundering and Sanctions Fines Dashboard at www.moneylaunderingbulletin.com shows.
Money Laundering Bulletin, August 2017
The Commissioners for Her Majesty’s Revenue and Customs v Jackson Grundy Ltd

[2017] UKUT 180 (TCC), Upper Tribunal (Tax and Chancery Chamber), Judge Colin Bishopp, and Judge Timothy Herrington


This was an appeal of a costs decision heard by Judge Colin Bishop and Judge Timothy Herrington at the Upper Tribunal (Tax and Chancery Chamber) on the 1 February 2017 by The Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) against Judge Brooks’ costs decision on the 24 May 2016 (following a direction set on the 19 March 2016), which followed a penalty decision of 9 March 2016 following a First-tier Tribunal (Tax Chamber) (“FTT”) decision reducing Jackson Grundy Ltd’s (“JGL”) penalty imposed (for breach of the Money Laundering Regulations 2007 (SI 2007 No 2157) (the “Regulations”) from £169,652 to £5,000 as it was found that the initial penalty of £169,652 was disproportionate. The FTT’s decision to reduce the penalty on JGL has not been appealed.

Jackson Grundy Ltd is an estate agency in rural Northamptonshire, and so as an estate agency was required to maintain appropriate procedures pursuant to the Regulations to check the identity of clients, to monitor their identity on an ongoing basis, to adopt and circulate written policy statements in relation to money laundering procedures, to train staff in relation to their responsibilities, and to keep records of the identity checks undertaken.

The Office of Fair Trading (“OFT”) was responsible for the supervision of estate agents and their compliance with the Regulations until the OFT was abolished on 31 March 2014 and those functions assumed by HMRC on the 1 April 2014. On 22 June 2012 the OFT undertook a compliance visit to JGL and concluded that there had been “significant and widespread” failings in JGL’s observance of the Regulations.

Commonwealth Bank of Australia in court – AUSTRAC alleges over 50,000 AML/CFT breaches

The Commonwealth Bank of Australia faces civil penalty proceedings in the Federal Court after AUSTRAC, Australia’s financial intelligence unit and AML/CFT regulator, accused it of “serious and systematic non-compliance” with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

The action, the first of its kind against a major bank in Australia – CBA is the country’s biggest mortgage lender – alleges over 53,700 breaches of the 2006 law, with focus on controls around its intelligent deposit machines (IDMs). The facility, which enables deposits of both cash and cheques, has proved increasingly popular: in the six months after CBA introduced IDMs in May 2012, A$89.1 million in cash was deposited; for the half year January to June 2016, the total was around A$5.81 billion cash.

AUSTRAC says that CBA failed to follow its own AML/CFT procedures in not assessing the laundering and terrorist financing risks around IDMs before their launch. Cards from any financial institution could be used to initiate a deposit into a CBA account but the bank would only know the identity of who was paying in the money if it was the issuer; such vulnerabilities were only looked at from mid-2015, the regulator claims. The delay meant that from November 2012 to September 2015 CBA failed to file, on time (within 10 business days), 53,506 threshold transaction reports (TTRs) – for transfers of physical currency with value A$10,000 or more – totalling A$624.7 million.

FCA’s latest push in the pensions sector

Transferring from a defined benefit pension to one without any safeguards, has historically been unlikely to be in a customer’s best interests, says the Financial Conduct Authority. Its recent consultation (CP17/16) aims to ensure consumers receive a thorough assessment of their needs and objectives, along with appropriate advice, when looking to give up valuable pension benefits.

There seems to be a daily headline regarding fresh action by the FCA in the retirement planning sector or against a pensions firm. The standards set by the regulator are apparently failing to be met, either through the pressure of running day-to-day business or a lack of clarity around the requirements.

This is against a backdrop of continuing development in the pensions sector, particularly following the reforms of 2015. Firms advising on pension withdrawals on the back of these reforms have been in the regulator’s shadow for some years now. The FCA has variously focused on SIPPs, non-standard assets, scams and now, with another consultation published on 21 June 2017, the specialist defined benefits (DB) transfer sector.

So what does the FCA have in store with these proposals? And what can firms do to avoid the worst of an FCA investigation as its gaze turns to those operating in the DB transfer sector?

What are the proposals?

The pensions freedoms introduced with the 2015 reforms have shaken up the market. Pension pots are now treated less like walled-off funds to be used to bargain for an annuity on retirement. Customers are increasingly exercising the range of options open to them to move their hard-earned savings about, particularly with the enticingly high transfer values currently on offer. With this consultation, the FCA appears to have recognised that the pensions world has moved on and the current rules are outdated when considering the variety of options now available.

There appears to be underlying concerns about the current state of the advice being given on DB transfers. The consultation highlights an apparent over-emphasis on the transfer value analysis (TVA) calculation, at the expense of a more rounded consideration of overall suitability. But the FCA also wants to give confidence to advisers by clarifying the rules, which it hopes will increase the availability of advice.

Chocorek v District Court of Kielce, Poland, [2017] Lloyd’s Rep FC Plus 33

[2017] EWHC 995 (Admin), Queen’s Bench Division (Administrative Court), Sir Wyn Williams


This is an appeal by Mr Robert Chodorek against an order for his extradition to Poland made by District Judge Baraister on 29 June 2016. On the 28 November 2000, the appellant was found guilty of theft in Poland. He was conditionally released on 20 December 2001. On the 27 June 2003, a decision was taken that he should serve the remaining six months 27 days of his sentence as he had committed a further offence following his release on 20 December 2001.

Ouseley J granted permission to appeal form the District Judge’s first instant decision as that hearing was uncontested by the appellant and the arguments in the grounds of appeal were not heard by the District Judge. As such, the grounds of appeal were assessed as if Sir Williams was the primary decision maker, as these grounds had not been heard before.

The judge allowed the appeal and discharged the appellant. (1) The threshold for dishonesty in regards to the offence of theft was not met. Following case law the appellant could have been guilty of the offence but the respondent failed to provide adequate information and facts relating to the offence. The appeal succeeded on this ground. (2) The second ground of appeal was also successful. The article 8 rights of the appellant would have been breached if he is extradited as the effect of his extradition would have had a disproportionate impact on his family, notably upon his wife’s health.
R v Morfitt

[2017] EWCA Crim 669, Court of Appeal, Lindblom LJ, Carr J, and HHJ Kinch QC

Confiscation — Criminal procedure — Benefit figure — Consent — Legal advice.

Following conviction for possession of drugs with intent to supply, the offender faced confiscation proceedings. The prosecution asserted that the offender had a criminal lifestyle and calculated a benefit figure using the assumptions created by section 10 of the Proceeds of Crime Act 2002. The sum alleged to be the benefit by the prosecution and pleaded in the prosecution statement served pursuant to section 16(3) was £442,800. This was based on a calculation of money that could have been earned from dealing in drugs over the six years prior to conviction, lowered to allow for the business to grow from nothing. The offender challenged both the benefit figure and the realisable amount.

However, upon advice from counsel, the offender agreed a sum of £250,000. The judge was presented with a consent order for the confiscation order, subject only to an argument on one aspect of the realisable amount. On appeal the offender alleged that he had been given the wrong advice to agree to the benefit figure and the realisable amount.

The Court of Appeal were therefore asked to determine: (1) whether the prosecution’s approach to making the section 10 assumptions had been wrong in law; (2) if so, whether the fact that the offender had consented to the confiscation order should prevent the order being set aside; and if it did not; and (3) whether the Court of Appeal should substitute a new order or remit the case for re-hearing.

The body of the judgment was an affirmation of the deference accorded to voluntary consent in legal proceedings and the need to restrict appeals in confiscation cases on the basis of incorrect legal advice to ones where there were exceptional circumstances. This case serves as a reminder that such exceptional circumstances amount to little more than the making of an order that is in fact unlawful, one the court had no power to make, irrespective of the parties’ consent. The Court of Appeal rehearsed the cases of R v Hirani [2008] EWCA Crim 1463 and R v Perkes [2010] EWCA Crim 101 and those that follow.

This is an extract of the original Report headnote. To access the full headnote, Report and commentary, please visit Lloyd’s Law Reports: Financial Crime Plus, on www.i-law.com.

Fine prospects

Ten years on from the Financial Crisis prudential regulators may be breathing slightly easier but not so their colleagues in AML/CFT enforcement, as our new interactive Money Laundering and Sanctions Fines Dashboard at www.moneylaunderingbulletin.com shows.

No penalties in the billions of late, perhaps - since JPMorgan ($2.05 billion in 2014) and HSBC ($1.9bn in 2012), but after a quiet interlude in 2015-2016, this year the leading US authorities have already, by end of July, levied sums for Bank Secrecy Act/AML breaches totalling $1.3 billion.

Western Union paid $586 million in January for not applying AML controls on certain of its agents, enabling transmission of proceeds from criminality like human trafficking and consumer fraud. The same month saw Deutsche Bank pay $425 million in the US, and a record £163 million fine to the UK Financial Conduct Authority, after mirror trading by corrupt bankers and offshore entities meant $10 billion exited Russia without triggering an internal alert. In another notable action, on 27 July, FinCEN fined overseas-based virtual currency exchange BTC-e $110 million, not only for failing to register as a money services business in the US and conduct proper customer due diligence but for facilitating transactions connected with ransomware, hacking, identity theft, public corruption and drug trafficking.

Penalties in the UK are traditionally orders of magnitude smaller than those in the US: while the Deutsche Bank fine, and one of £72 million on Barclays, in 2015 (for bypassing its usual checks on politically exposed persons (PEPs) in a structured finance transaction), cannot yet be described as a trend, they do represent a major hike.

What’s included:

- **Lloyd’s Law Reports: Financial Crime** – Access a unique database of reports to find important and relevant cases quickly and easily
- **Lloyd’s Financial Crime Law Reporter** – Be alerted to the latest relevant court developments online and via email
- **Money Laundering Bulletin** – The latest news and in-depth analysis for anti-money laundering professionals
- **Fraud Intelligence** – A comprehensive resource and archive for financial crime specialists fighting fraud, bribery and corruption
- **Compliance Monitor** – Know how to implement changing UK and EU financial services regulations and stay ahead of issues

Set up e-alerts and view your recent searches and folders
2 Conduct a Law Reports or citation search and view your recent activity
3 A breadcrumb trail instantly shows you where you are on the site
4 Conduct a quick search from any page on i-law
5 Create folders, print and email a document to share with your colleagues

Find out more
Experience i-law for yourself – register for your free trial today.

maritimeintelligence.informa.com/products-and-services/law/financial-crime
+44 (0) 20 7017 7565 lawsales@informa.com
@maritimelegal