

# Butterworths Money Laundering Law

**Bulletin Editor**  
Martyn J Bridges

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**HM Treasury**

***UK response to the European Commission's report on the application of the Directive on the prevention of money laundering and terrorist financing***

On 13 June the Government published the UK response to the revision of the Third Money Laundering Directive. The full text consisting of seven pages may be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/200634/fin\\_response\\_ec\\_report\\_application\\_directive\\_on\\_prevention\\_of\\_money\\_laundering\\_terrorist\\_financing.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200634/fin_response_ec_report_application_directive_on_prevention_of_money_laundering_terrorist_financing.pdf)

***Approved guidance on money laundering controls and terrorist financing***

On 21 May 2013 HMT published a list of approved guidance which may be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/200701/aml\\_hmt\\_approved\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200701/aml_hmt_approved_guidance.pdf)

***Advisory Notices***

No advisory notices were issued during this period.

***Financial Sanctions***

The Department for Business, Innovation & skills has published a detailed guide on sanctions, embargoes and restrictions. This may be found here: <https://www.gov.uk/sanctions-embargoes-and-restrictions>

A consolidated list of asset freeze targets designated by the United Nations, European Union and United Kingdom under legislation relating to current financial sanctions regimes was updated on 28 June 2013, it is available here: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Regime specific lists and releases can be found here: <https://www.gov.uk/government/organisations/hm-treasury/series/financial-sanctions-regime-specific-consolidated-lists-and-releases>

**FCA**

***FCA fines EFG Private Bank £4.2m for failures in its anti-money laundering controls***

The Financial Conduct Authority (FCA) has fined EFG Private Bank Ltd (EFG) £4.2 million for failing to take reasonable care to establish and maintain effective anti-money laundering (AML) controls for high risk customers. The failings were serious and lasted for more than three years.

EFG is the UK private banking subsidiary of the EFGI Group, a global private banking group, based in Switzerland. EFG provides private banking and wealth management services to high net worth individuals including

some from overseas jurisdictions recognised as presenting a higher risk of money laundering and/or bribery and corruption. At the end of 2011 around 400 of EFG's 3,342 customer accounts were deemed by the firm to present a higher risk of money laundering or reputational risk, and of these 94 were held by politically exposed persons (PEPs).

As part of a thematic review of how UK banks were managing money laundering risk in higher risk situations, the Financial Services Authority (FSA) visited EFG in January 2011. That visit and further investigation caused serious concern to the FSA. The investigation found that EFG had not fully put its AML policies into practice. Of particular concern was that 17 of 36 reviewed customer files, opened between December 2007 and January 2011, contained customer due diligence that highlighted significant money laundering risks, but insufficient records of how the bank's senior management had mitigated those risks.

Of these 17 files, the FSA found that the risks highlighted in 13 files related to allegations of criminal activity or that the customer had been charged with criminal offences including corruption and money laundering.

For example in one account, EFG's due diligence highlighted that a prospective client had acquired their wealth through their father, about whom there were allegations of links with organised crime, money-laundering and murder. However there was insufficient information on file to explain how the bank concluded that this risk was acceptable or how it was mitigating the risks.

EFG also failed to appropriately monitor its higher risk accounts. Of the 99 PEP and other high risk customer files reviewed by the FSA, 83 raised serious concerns about EFG's monitoring of the relationship.

As a result of these failures, EFG breached FSA Principle 3, requiring it to take reasonable care to organise and control its affairs responsibly and effectively.

Tracey McDermott, director of enforcement and financial crime, said:

One of the FCA's objectives is to protect and enhance the integrity of the UK financial system. This includes ensuring money in the UK system is clean.

Banks are the first line of defence to make sure that proceeds of crime do not find their way into the UK. In this case while EFG's policies looked good on paper, in practice it manifestly failed to ensure that it was addressing its AML risks. Its poor implementation of its agreed policies risked the bank handling the proceeds of crime. These failures merited a strong penalty from the FCA.

Firms that accept business from high risk customers must have systems, controls and practices to manage that risk. The FCA will continue to focus on high risk customers and business.

EFG settled at an early stage of the investigation and qualified for a 30% discount on its fine. Without the discount the fine would have been £6 million.

### ***FCA publicly censures Horn Express Ltd (formerly known as Qaran Express Money Transfer Limited) for breaches of the Payment Services Regulations***

The FCA has publicly censured Horn Express Limited (formerly known as Qaran Express Money Transfer Limited, 'QEMTL') for failing to safeguard and segregate customer funds. The FCA would have fined QEMTL £136,687 had the firm not produced verifiable evidence that imposing a fine would have caused it serious financial hardship.

QEMTL is a money transfer company authorised by the FCA under the Payment Services Regulations 2009 ('PSRs', for which the FCA is the competent authority). It has not traded as a money transfer business since early 2012. This is the first time that a public sanction has been imposed on a payment institution authorised under the PSRs for misconduct under the PSRs (other than for failures to comply with minimum conditions for registration or authorisation under the PSRs).

QEMTL's customers commonly used its services to transmit money overseas from the UK. At times during the period 1 December 2009 to 26 August 2011, QEMTL mixed customer funds with its own monies in the same bank account and failed to record accurately how much of the money in that account was customers' funds. From 1 December 2009 until 16 December 2011 QEMTL also failed to properly reconcile the customer funds held in its bank account.

Further, QEMTL did not set the bank account up correctly. For instance, it was not labelled as a customer funds account, thereby creating a risk that, in the event of QEMTL's insolvency, customers might have lost their money.

In addition to its failures to segregate and safeguard customer funds correctly, QEMTL also failed to sufficiently supervise its branches and agents. The records of compliance visits that it carried out failed to record an adequate assessment of the safeguarding and segregation requirements for customers' funds.

Bill Sillett, FCA head of retail enforcement said:

This case highlights the wide remit of the FCA; we are not just the regulator of firms authorised under the Financial Services and Markets Act. We will use our enforcement powers to the full extent and this case, the first of its kind, demonstrates that we will take action where breaches are identified. It is not acceptable that customers' monies are put at risk by firms, whether in the financial services or payment services sector, and we will take action to tackle this.

***Two arrested in FCA insider dealing investigation***

On 30 April the FCA, with the assistance of the City of London Police Economic Crime Directorate, executed a search warrant in West London. Two people, a man aged 41 and a woman aged 37, were arrested and questioned in connection with an investigation in to insider dealing and market abuse.

No further details can be confirmed at this time and no individuals have been charged. The arrests are not linked to any other ongoing insider dealing investigation.

Business and private premises in Switzerland were also searched by the Swiss authorities in connection with the FCA's investigation.

Insider dealing is a criminal offence that is punishable by a fine or up to 7 years imprisonment.

***FCA charges two in relation to an unauthorised investment scheme***

The FCA has charged Alex Hope of Docklands, London and Raj Von Badlo of Bourne End, Buckinghamshire with a total of ten offences relating to an unauthorised investment scheme they promoted and operated. The scheme purported to carry out FOREX trading for the benefit of investors and is believed to have taken over £5 million from investors.

The charges follow searches of addresses occupied by the two men that were conducted by the Financial Services Authority with the assistance of the City of London Police in April and May 2012. Both men were arrested at the time of, or shortly after, the searches being conducted.

Both men have been bailed to attend City of London Magistrates Court.

***FCA bans and censures managing director of SIPP operator  
Montpelier Pension Administration Services Limited***

The FCA has banned Kevin Wells, the managing director of Montpelier Pension Administration Services Limited (MPAS), from performing any significant influence function at any regulated firm, and also censured him.

Wells would have been fined £58,500 but for the fact that he was able to show that the penalty would cause serious financial hardship.

Following investigation the FCA concluded that Wells did not have an adequate understanding of the SIPP operator's regulated activities and corresponding regulatory responsibilities or of his own responsibilities as the managing director of the firm.

Wells led a rapid expansion of the business, away from standard investments, but had not identified or mitigated the risks involved for the MPAS SIPPs and SIPP members as a result of this expansion. By allowing a high proportion of non-standard investments into the MPAS SIPPs without the necessary controls or adequate capital resource, he exposed customers and MPAS itself to a significant level of risk. Further, Wells did not understand,

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or make reasonable efforts to understand, MPAS' capital and compliance needs, which meant that provisioning for both was lacking.

The FCA also found that Wells' failings meant that MPAS:

- put client money at risk by breaching FCA rules on client assets;
- failed to vet and monitor third parties, for example the IFAs and fund managers with which MPAS dealt; and
- lacked adequate knowledge of the assets it administered for clients.

Tracey McDermott, director of the enforcement and financial crime division at the FCA, said:

Last October, as the Financial Services Authority, we published the findings of a thematic review on SIPP operators and outlined some of our key concerns in this sector; this case is a graphic illustration of the reasons for these concerns. Wells' tenure as managing director should be seen as a 'how-not-to' guide of running a SIPP operator – he was out of his depth.

I would recommend that anybody operating, or thinking of operating, a SIPP reads the final notice in detail; it covers almost all aspects of SIPP operation and is a good indicator of the standards we expect. Were it not for his financial circumstances, we would have imposed a significant financial penalty, but even without it, he has paid a heavy price.

In October 2012 the Financial Services Authority published proposals outlining how much capital SIPP administrators must hold in future. The proposed regime reflects the growing popularity of SIPPs as a way to invest, the wide range of assets that can be placed within them, and will help protect consumers should the operator have to be wound down.

### ***FCA charges eight men in relation to land banking***

Eight men have been charged by the FCA with conspiracy to defraud contrary to common law between August 2008 and November 2011 and criminal offences relating to the carrying out of a regulated activity without authorisation or exemption contrary to s 19 FSMA 2000.

The charges arise out of Operation Cotton, an on-going FCA investigation into the activities of three land banking companies: Plott UK Limited (Plott), European Property Investments (UK) Limited (EPI) and Stirling Alexander Limited. These companies are believed to have taken over £5 million from UK investors between 2008 and 2011. The FCA's predecessor, the Financial Services Authority (FSA), had previously successfully brought civil proceedings against Plott and EPI which resulted in the compulsory winding up of these companies in June 2011 and December 2012 respectively.

Scott Crawley, Daniel Forsyth, Ross Peters, Aaron Petrou, Ricky Mitchie, Dale Walker, Adam Hawkins and Brendan Daley have been bailed to attend City of London Magistrates Court on 10 May 2013.

Dale Walker, a solicitor with Dale R Walker Solicitors, has also been charged with Money Laundering contrary to s 329 (1)(c) Proceeds of Crime Act 2002.

Additionally, Daniel Forsyth has been charged with providing false information to the FSA contrary to s 177 FSMA 2000.

The FCA cannot provide any further comment or information at this time.

Land banking companies divide land into smaller plots to sell it to investors on the basis that once it is available for development it will soar in value. However, the land is often in areas of natural beauty or historical interest, with little chance of it being built on.

He has given an undertaking not to act as a company director until June 2025.

### ***Enforcement and Credible Deterrence in the FCA***

On 18 June Tracey McDermott delivered a speech on this subject. The text can be found here: <http://www.fca.org.uk/your-fca/documents/enforcement-and-credible-deterrence-in-the-fca>

## **HMRC**

### ***HMRC to contact businesses registered under the Money Laundering Regulations***

HM Revenue & Customs (HMRC) Anti-Money Laundering Compliance Officers will shortly begin a programme of telephoning businesses registered with, and supervised by HMRC under the Money Laundering Regulations (MLR) 2007.

These calls will be in addition to and will complement ongoing HMRC compliance activity. HMRC will be contacting businesses to make sure that up to date information is held about their activities. The calls will also further improve HMRC understanding of customers and to find out whether they need any additional help.

HMRC can ask registered businesses for this information under Regulation 37 of the MLR 2007 and this has proved to be a very cost effective way for both customers and HMRC supervisors to conduct its compliance activity.

During the calls the HMRC officers will confirm their identity and ask businesses for their security information. They will ask for details of business activities, customers and also answer any questions. This will help HMRC decide whether a visit is needed and give businesses the opportunity to clarify any issues they may have.

### ***Changes to guidance on penalties under HMRC Money Laundering Supervision***

HM Revenue & Customs (HMRC) has reviewed its guidance on penalties for businesses under HMRC Money Laundering Supervision and has made

some amendments to clarify its approach. You can find the amended guidance by following the link: <http://www.hmrc.gov.uk/mlr/problems-checks/appeals-penalties.htm>

The guidance explains the range of actions that HMRC, as a supervisor, can take when businesses breach the Money Laundering Regulations. The action HMRC can take ranges from warning letters to criminal prosecution.

Any action taken will continue to depend on the particular circumstances of the case and the impact and severity of the failings identified.

### ***Significant Changes to the guidance for Trust or Company Service Providers***

Following a consultation with the relevant trade body, HM Revenue & Customs (HMRC) is amending the registration guide for Trust or Company Service Providers (TCSPs) to clarify who is liable for registration.

For the purposes of the Money Laundering Regulations, HMRC has confirmed that any business that provides any of the following is classed as acting as a TCSP:

- registered offices;
- business addresses;
- accommodation or correspondence addresses; and
- mail forwarding or other related services for a company, partnership or any other legal person or arrangement.

For these purposes, 'legal person or arrangement', does not include sole traders or private individuals.

The following extract from the guidance may be helpful:

**I provide company services to businesses by forwarding their mail. Will I be required to register?**

Yes, if you undertake these activities on behalf of a company or partnership

**I provide office accommodation. Is my business within the scope of the regulations?**

No, the right to physically occupy your premises is not the same as the right to use your address.

**I operate a business providing a virtual office service. Is this business within the scope of the regulations?**

Yes, if you provide services such as answering telephone calls and emails, mail forwarding and other related admin services along with the provision of a business address or an accommodation address.

**I provide a business/correspondence/accommodation address. Is this within the scope of the regulations?**



Yes, if you provide another firm with the right to use your address as a place where customers or others can send correspondence. This does not apply where customers are sole traders or private individuals.

**I provide office accommodation by renting out physical space to customers and I also provide admin services to these customers such as secretarial services and telephone and e-mail answering services. Is my business within the scope of the regulations?**

No, you are not within the scope of the regulations if you are providing a physical space to your customers

You should contact HMRC immediately if you are not registered for supervision under the Money Laundering Regulations and you provide registered offices, business addresses, accommodation or correspondence addresses, or mail forwarding or other related services for a company, partnership or any other legal person.

## OFT

### ***OFT fines Leeds-based estate agent***

The OFT has fined Leeds-based Oliver James Estates and Land Agents Limited £2,000 for failing to register with the OFT.

All estate agents and some credit lending businesses need to register with the OFT as part of their responsibilities under the Money Laundering Regulations 2007.

Despite the OFT repeatedly contacting and advising Oliver James between November 2011 and February 2012 of the need to register, the business failed to do so.

Kate Pitt, OFT Deputy Director of Anti-Money Laundering, said: *'We will not hesitate to take action against any estate agents and lenders that fail to register with the OFT.'*

### ***OFT bans Sandwell property agent Amerjit Singh Dhuga trading as WLI.uk.com from estate agency work (Order made 18 March 2013)***

The OFT has issued a prohibition order banning a Sandwell property agent from estate agency work as a result of his convictions, including his convictions for offences of fraud.

Amerjit Singh Dhuga has been banned from carrying on estate agency work after he was prosecuted by Sandwell Trading Standards Service and convicted of multiple offences under the Consumer Protection from Unfair Trading Regulations 2008, the Business Protection from Misleading Marketing Regulations 2008 and the Fraud Act 2006 by the Warley Magistrates' Court on 21 January 2011.

Following Mr Dhuga's convictions, the OFT launched its own investigation under the Estate Agents Act 1979. The OFT determined that Mr Dhuga is unfit to carry on estate agency work.

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Mike Coates, Assistant Director in the OFT's Goods and Consumer Group said:

These were serious offences and a reminder to all estate agents that by engaging in acts of fraud or other dishonesty or by committing offences under the Consumer Protection from Unfair Trading Regulations 2008, they are likely to face a ban from the profession.

The OFT, working together with the Trading Standards Service, will continue to take tough action against estate agents who flout the law.

### ***London-based estate agent fined***

On April 22 2013, the OFT imposed a penalty of £2,000 on Maxim Property Limited for carrying on estate agency business after 31 January 2010 without being registered with the OFT, a breach of Regulation 33 of the Money Laundering Regulations 2007. The company has 28 days to appeal.

### ***OFT imposes penalty on London-based estate agent***

On 14 June 2013 the Office of Fair Trading imposed a penalty of £2,000 on London-based estate agent Atkins Real Estate Limited for carrying on estate agency business after 31 January 2010 without being registered with the OFT, a breach of Regulation 33 of the Money Laundering Regulations 2007. The company has until 12 July 2013 to appeal.

## **SFO**

### ***SFO proposes increasing corporate fraud liability***

Financial Times, 6 June 2013: Under new proposals by the Serious Fraud Office companies who failed to prevent fraud or theft by their employees would be criminally liable.

SFO Director David Green has said these proposals were needed in order to help the SFO pursue companies. According to Mr Green 'only then would we be properly equipped to prosecute corporates rather than individuals'.

Mr Green, who was speaking at law firm Baker & McKenzie, also said making it more straightforward for prosecutors to bring charges against companies for fraud would complement newly introduced legislation allowing deferred prosecution agreements, (DPAs), in which companies can confess to wrongdoing in order to delay criminal charges and fines.

Under current fraud law prosecutors have to prove a 'controlling mind' at director level in order find a company criminally liable.

However, there is an exception under the Bribery Act which allows companies to be prosecuted if they are found not to have 'adequate procedures' in place to prevent employees or agents paying bribes. Mr Green wants this legislation to be extended to other financial crimes, such as fraud and theft.

***Trader charged in LIBOR investigation***

Tom Hayes, a former trader at UBS and Citigroup, has today been charged with offences of conspiracy to defraud in connection with the investigation by the Serious Fraud Office into the manipulation of LIBOR.

Tom Alexander William Hayes, 33, of Surrey was one of the three individuals arrested and interviewed on 11 December 2012 by officers from the SFO and City of London Police. He attended Bishopsgate police station this morning where he was charged by City of London Police with eight counts of fraud. He will appear before Westminster Magistrates' Court at a later date.

The SFO's investigation into the manipulation of LIBOR continues.

***Final conviction in Torex Retail false accounting case***

Mark Woodbridge, a company executive, has been sentenced at Oxford Crown Court to three years and ten months' imprisonment for a fraud where accounts were manipulated to show healthy trading. This is the conclusion of a fraud conspiracy prosecution against four former executives of retail software company, Torex Retail plc.

Additionally Mr Woodbridge has been disqualified from acting as a company director for three years and is to pay costs of £170,000 within 12 months.

One of the executives, Nigel Horn who was tried alongside Mr Woodbridge, was acquitted. Two others on the same indictment, Christopher Moore and Robert Loosemore, were not tried alongside Woodbridge and Horn as they had already pleaded guilty ahead of trial.

Torex Retail plc, a company involved in the retail software sector for touch-screen tills, was formed in 2004. The company, which was listed on the Alternative Investment Market of the London Stock Exchange, went into administration in June 2007 following the suspension of trading in shares of the company on 26 January 2007. The offences took place between 1 May 2006 and 26 January 2007.

**The four defendants**

Verdicts were returned over 19 and 20 June.

Found guilty of two counts of conspiracy to defraud and one count of false accounting was:

- Mark Gavin Woodbridge, 42, of Kineton, Warwick. He was Group Financial Accountant for the Torex Retail Group of Companies.

Acquitted of conspiracy to defraud was:

- Nigel David Horn, 59, of Bourton-on-the-Water, Gloucestershire. Legal Director and Company Secretary. The jury could not reach a verdict. The prosecution is not to seek a retrial and the judge directed that he be acquitted.

The defendants who pleaded guilty ahead of trial to two counts of conspiracy to defraud are:

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- Christopher Edward Moore, 58, of Hook Norton, Banbury. He was appointed Chief Executive Officer in February 2005 and replaced Mr Loosemore as Executive Chairman in September 2005. Mr Moore stood down as Chief Executive Officer in September 2006, but retained the post of Chairman.
- Robert William Loosemore, 47, of Oxford. He was Executive Chairman of Torex Retail Plc. until September 2005. His association with Torex continued thereafter as a consultant and major shareholder.

### **Conspiracy to defraud contrary to common law (two counts)**

Messrs Moore and Loosemore pleaded guilty and Mark Woodbridge was found guilty of conspiring to defraud the shareholders of the company between May and August 2006 by falsely inflating by £6.5m the cash at bank/revenue figures of the company's interim results which were published on 14 August 2006. In order to justify these entries the defendants created two false documents; a false distribution agreement worth £5m between the company and Mr Loosemore's private company, Magdalen Consulting Ltd; and a false 'Goodwill Deposit' agreement worth £1.5m between the company and Mr Loosemore.

Messrs Moore and Loosemore pleaded guilty and Mark Woodbridge was found guilty of further conspiring between November 2006 and 26 January 2007 to defraud the shareholders of the company by creating a further false agreement between the company and Magdalen Consulting Ltd which purported to vary the original false distribution agreement in order to sustain the original fraud. Mr Horn was acquitted of this offence, the only one he faced.

Messrs Moore and Loosemore were sentenced in January this year: Moore to 30 months imprisonment for each count, to be served concurrently. He was also ordered to pay £100,000 in prosecution costs and disqualified as a director for one year; Loosemore to 20 months imprisonment for each count, to be served concurrently. He was also ordered to pay £50,000 in prosecution costs and disqualified as a director for one year. These sentences could not be previously reported.

### **False accounting contrary to s 17 (1)(a) Theft Act 1968 (three counts)**

Mr Woodbridge was found guilty of one count of false accounting between May and August 2006 by causing a further sum of £2m revenue to be falsely recognised in the company's interim financial statement. He was acquitted of two other counts.

### **Investigation and Proceedings**

The investigation began on 29 January 2007. A number of residential property searches were undertaken and a business premises in Banbury were undertaken on 29 and 30 January 2007 and 21 March 2007. The defendants were charged in May 2011 and the trial of Woodbridge and Horn opened on 18 March 2013. Messrs Moore and Loosemore entered pleas on 11 January 2013 and were sentenced on 30 January 2013.

### **XN Checkout**

Separate to these proceedings, but as part of the Torex investigation, two directors of a Torex subsidiary company XN Checkout Ltd, Edwin Dayan and Christopher Ford, were convicted in January 2011 of conspiracy to defraud Torex shareholders by causing false profits to be entered in the published 2005 year end accounts and the 2006 interim accounts, attributed to a fabricated agreement with pub chain outlet Mitchells & Butler. Mr Dayan was also a Director of Torex Retail plc.

The Torex case, with five from six defendants convicted over two trials, is now concluded.

### ***Deferred Prosecution Agreements: Consultation on Draft Code of Practice***

The Director of the Serious Fraud Office and Director of Public Prosecutions has published a draft Code of Practice setting out their approach to the use of Deferred Prosecution Agreements (DPAs).

This new tool was introduced in the Crime and Courts Act 2013, which received Royal Assent in April this year.

A DPA involves a company reaching an agreement with a prosecutor where the company is charged with a criminal offence but proceedings are automatically suspended. The company agrees to a number of conditions, which may include payment of a financial penalty, payment of compensation, and co-operation with future prosecutions of individuals. If the conditions are not honoured, the prosecution may resume.

DPAs may be used for fraud, bribery and other economic crime. They apply to organisations, not individuals.

A DPA could be appropriate where the public interest is not best served by mounting a prosecution. Entering into a DPA will be a transparent public event and the process will be supervised by a judge.

The Director seeks views on eight points covered in the draft Code, including the circumstances when a prosecutor should consider a DPA, the criteria to apply when making this decision, and on the disclosure approach envisaged.

Comments are welcome from interested individuals and organisations. The consultation closes on Friday 20 September 2013.

### **SOCA**

#### ***Mother and son jailed for mortgage fraud racket***

Fraudsters who cheated taxpayers out of millions of pounds over a 10-year period have today been sentenced to a total of six years in prison.

Bonnita Read, aged 64, and her son Niki Wood, aged 40, both from Leigh-on-Sea in Essex, deliberately submitted multiple fraudulent mortgage applications to obtain properties in areas of Essex, including Woodford Green, Chigwell and Leigh on Sea.

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SOCA's investigation found that Bonnita Read submitted her first fraudulent applications in the late 1990s to purchase houses in London. Using the self-certification mortgage system, they were able to falsify incomes, employment details, National Insurance numbers and references. Clearly believing that the system was flawless, Bonnita Read, introduced her son Niki Wood into the family 'business'.

After a four week trial, Read, Wood and Omoruyi were all found guilty.

At Blackfriars Crown Court, HHJ Richardson said: Said that Bonnita Read was *'canny and too clever by half'* and her evidence came across as *'very astute'*. Regarding Niki Wood's involvement in the case, HHJ Richardson remarked that he was of the clear opinion that he was not *'led by the nose'*.

A financial investigation is currently underway. The investigation was in partnership with the FSA.

### ***Money laundering network jailed***

Eight men have now been jailed for their roles in a complex £19m money laundering racket which serviced international organised crime groups.

The men worked with criminal associates in the Middle East and Pakistan to transfer predominantly drug money for criminals both in the UK and Europe. SOCA officers watched as they moved tens-of-thousands of pounds around the country in plastic carrier bags.

A money laundering technique known as cuckoo smurfing was used where proceeds of crime are transferred through the accounts of legitimate and unwitting customers who are expecting genuine payments from overseas.

SOCA's meticulous investigation resulted in the seizure of over £730,000 of cash and 1.5kg of heroin. Officers also evidenced that the group had laundered around £19m between January 2011 and March 2012 alone.

In March 2013, five men from the West Midlands, Arman Zahir, Sahil Khan, Jalil Ahmed, Khayam Chib, Hussain Aziz, and Stafford man Gary Brockway, received sentences totalling 43.5 years.

Serious Crime Prevention Orders were later granted against Zahir, Khan and Ahmed restricting their use of mobile telephones, computers, money service businesses, and the possession of large amounts of cash.

At Birmingham Crown Court today, the final two men from Leeds, Abid Hussain and Arshad Hanif, were each sentenced to two years.

Sarah Goodall, SOCA Regional Head of Investigations, said:

Money is the engine that drives organised crime and criminals such as these men are purely motivated by profit. The crimes that have been committed to generate the huge sums of cash that this group has helped to launder will have a lasting effect on local communities.

SOCA has demonstrated that no matter how sophisticated criminals think their money laundering arrangements are, and no matter what

measures they take to disguise their illegal activities, they will be tracked down and brought to justice.

Joanne Jakymec, Deputy Head of the Crown Prosecution Service's Organised Crime Division, said:

It should not be forgotten where money that is laundered by men such as these comes from. Organised criminals steal and extort at both home and abroad, and the defendants enabled these ruthless gangs to hide their ill-gotten gains from the authorities. Their sentences reflect the crucial role that they play in these criminal enterprises. I would like to thank all involved for their hard work and dedication in bringing these men to justice.

## **Bribery Act**

### ***Bribery law review to reduce costs and cut red tape for SMEs***

The UK's Bribery Act could be watered down in a bid to remove red tape, and reduce undue costs and burdensome procedures on small and medium sized enterprises, the Financial Times reports. The proposals follow pressure from UK companies which feel the advice given is overly prescriptive. However, critics claim the move would compromise the government's pledge to strengthen the UK's approach to tackling bribery and corruption.

The review of the Bribery Act, which is expected to be announced in June 2013, will focus on 'facilitation payments' made to officials in order to accelerate or allow a service such as customs checks, a meeting summary of top-level civil servants shows.

The summary shows businesses are unsure as to the measures they would need to implement and demonstrate to avoid prosecution for facilitation payments, which can be required when expanding operations overseas, the summary reports.

The review is also part of the government's crackdown on red tape, which businesses state is an enduring problem in the UK.

## **Other Financial Crime News**

### ***City of London Police secure first carbon credit fraud prison sentences***

Two men have been jailed for carbon credit fraud, following a three-year investigation. The men headed an international boiler room fraud, responsible for funnelling \$9m from UK investors into US and Canadian bank accounts. The prison sentences are the first secured by the City of London Police for this type of offence. The two men often targeted the elderly and other vulnerable people.

Ian Macdonald and David Downes targeted thousands of individuals, offering them carbon credits and shares market as highly profitable investments. They were in fact virtually worthless. The men spent some of the money on lavish lifestyles, but the police froze a number of bank accounts and will return a large portion of the money to the police.

Mr Macdonald was sentenced to eight years' imprisonment for money laundering, while Mr Downes received four and a half years after pleading guilty to conspiracy to defraud. The men cold-called vulnerable individuals and pressurised them into making investments. A number of people were contacted months later, and were told that due to an imminent hostile takeover they would have to provide more finance to protect their original investments. Some individuals lost up to £600,000. Over 1,800 potential victims were contacted by the police by the time of trial.

### ***Imprisoned waste criminal ordered to spend further three years behind bars***

The owner of an illegal waste business, currently serving a four-and-a-half year prison sentence after being convicted in 2011 for waste crimes and money laundering, has been sentenced to a further three years in jail after failing to pay back the full amount of a £917,000 confiscation order. He still owes a total of £578,845.71, including interest.

Hugh O'Donnell's waste business netted millions of pounds in profit by taking skips loaded with construction and demolition waste to a site in Aldermaston, Berkshire, to be dumped in an illegal landfill. He was first jailed in 2009 for possession of an illegal firearm, uncovered during an Environment Agency investigation, and then sent back to prison the day after his release in 2011 for money laundering and waste offences.

He was due for early release in June 2013. On 3 May 2012, Mr O'Donnell was ordered to pay £917,000 under the Proceeds of Crime Act 2002 by 3 November 2012. He was granted a further six months to pay which expired on 3 May 2013.

Mr O'Donnell stopped co-operating with the Environment Agency in respect of the realisation of his assets to release the monies to satisfy the confiscation order.

The additional three-year sentence runs consecutively to his current period of imprisonment.

On completion of this third sentence, Mr O'Donnell will have served longer in prison than any other criminal for waste-related crimes.

### ***Former Mortgage Broker Committed to Crown Court for Conducting Unauthorised Business***

On Monday 29 April 2013, Michael Joseph James Lewis of 3 Sedley Close, Rainham, Gillingham, appeared at Medway Magistrates Court in relation to criminal offences brought against him by the Financial Conduct Authority.

Mr Lewis was committed for trial to Maidstone Crown Court in relation to:

- 13 counts of Breaching of the General Prohibition (contrary to Section 23 of FSMA 2000) in that Mr Lewis conducted regulated business when he was not authorised to do so; and



- three counts of assisting a Fraud by False Representation (contrary to Section 44 of the Serious Crime Act 2007 and Section 2 of the Fraud Act 2006) in that Mr Lewis assisted or encouraged others to commit fraud by falsifying documents.

Mr Lewis was originally arrested on 24 October 2012 in a joint operation between the Financial Services Authority (FSA) and Kent Police and he was charged at Medway Police station on Thursday 7 February 2013.

Mr Lewis had previously been prohibited by the FSA from acting as an authorised person on 9 August 2011.

On the 29 April 2013, the court made an order under the Contempt of Court Act 1981 which stated that although the simple fact of the prohibition order can be published there 'should be no publication of any findings or the circumstances founding the basis of the prohibition order imposed by the FSA on 9 August 2011 due to a substantial risk of prejudice to the administration of justice'. This order will continue until formally varied by a Court.

### ***12-year ban for boss who laundered crooked builders' dirty money***

A director of a cheque converting business, Michael Anthony Joyce, has been banned from running a company for 12 years for laundering cheques for rogue builders and for taking in a cheque from a client when his business was already insolvent and unlikely to honour the cheque. He had cashed cheques for a group of rogue builders in the sum of at least £224,631 and has given an undertaking not to act as a company director until Jun

The defendant cashed cheques for a group of rogue builders totalling at least £224,631, causing the company Chequechange Ltd to breach the Money Laundering Regulations 2007, SI 2007/2157. The builders targeted elderly home-owners, cold calling them and offering free inspections of the paint-work on exterior walls of their homes. They then damaged the fabric of the walls in the course of these inspections and charged the residents significant sums of money to repair the damage.

Joyce cashed cheques the builders took from those customers but failed to carry out proper background checks. It is unlikely the funds can be tracked down to return to the customers.

Joyce also admitted he had taken in a £19,600 cheque from a member of the public at a time when he knew Chequechange was insolvent, so unlikely to honour it. The victim lost £16,080. Chequechange Ltd, Company Number 03544600 went into liquidation on 20 October 2011 with no assets, liabilities of £1,958,205, and a total deficiency of £1,958,205. It traded from 1998, as a cheque converting business for a range of corporate businesses, sole traders and private individuals.

### ***R v Lee and another***

Criminal law – Appeal. The defendants were husband and wife and had pleaded guilty to offences of conspiracy to rob and money laundering. They

appealed against the confiscation order on a number of grounds which challenged the calculation of benefit and assessment of available assets. Largely, their appeals failed except one ground which related to the benefit received by way of a mortgage advance. It was conceded by the Crown that following the case of *R v Waya* [2012] All ER (D) 166 (Nov) that sum should not have been included in the benefit figure for both defendants.

### ***R v Jawad***

Sentence – Confiscation order. The defendant had pleaded guilty to a money laundering connected with frauds on a bank. The loss to the bank from the fraud had been £64,086.76 (the loss). A confiscation order was made, pursuant to the Proceeds of Crime Act 2002, which included the full amount of the loss. A compensation order was subsequently made, also for the full amount of the loss.

The defendant appealed against the confiscation order contending that it was disproportionate. The Court of Appeal, Criminal Division held that if within 28 days of the date of the judgment the defendant repaid to the bank the sum of £64,086.76, together with the interest properly payable upon it, then the appeal would be allowed to the extent of reducing the confiscation order by £64,086.76. If the defendant did not pay that sum within 28 days the appeal would be dismissed.

### ***Scottish criminals stripped of £80m in assets***

More than £12 million worth of proceeds of crime has been recovered in the past year, the Solicitor General Lesley Thomson, QC, announced.

The specialist prosecutors of the Crown's Serious and Organised Crime Division secured confiscation orders worth over £8 million against convicted drug dealers, benefit fraudsters, and a variety of others including more than £4.3 million alone from those involved in the 'black fish' cases.

In addition, the Civil Recovery Unit recovered over £4 million during the same period. The Civil Recovery Unit will issue its Annual Report giving further information about its activities during 2012/13 on Monday 29 April. A preview of the figures and case studies can be found in the Notes to Editors below.

The amount recovered by the Crown Office and Procurator Fiscal Service and the Civil Recovery Unit in the last 12 months brings the total secured since the commencement of the Proceeds of Crime Act (POCA) in 2003 to more than £80 million.

A large proportion of the money has now been put to the Scottish Consolidated Fund to be reinvested in Scottish communities via the CashBack for Communities programme.

Announcing this year's POCA figures, the Solicitor General said:

This year we have taken more than £8 million from convicted criminals and a further £4 million thanks to the work of our Civil Recovery Unit. This takes the total recovered for the past 10 years to more than £80 million.

By full use of the proceeds of crime legislation, law enforcement can strike at the very heart of criminality in Scotland to ensure that criminal networks big and small are disrupted and dismantled.

My message is clear – if you try to make a profit from crime, the Crown will use this legislation to the maximum to take that profit from you and ensure it is put to a much better use in communities across Scotland through the Scottish Government’s CashBack Scheme.

Lindsey Miller, Head of the Serious and Organised Crime Division (SOCD) and the COPFS POCA Champion, said:

Over the past ten years, the Proceeds of Crime Act has been proven time and again to be an extremely powerful and flexible tool in the hands of prosecutors.

We have taken more than £80 million from criminals, which otherwise could have been reinvested in their criminal enterprises.

However, we have not become complacent in our success. Crime evolves and we must evolve with it. In the last year alone, we have seen successful confiscation orders against people who have participated in all types of crime, including drug dealing, selling counterfeit goods, embezzlement, human trafficking and benefit fraud.

We will continue to use our experience and expertise to maximise disruption to criminal enterprises.

Justice Secretary Kenny MacAskill said:

Prosecutors and police are cracking down on organised crime and criminals have nowhere to hide. More than £12 million has been confiscated from criminals last year, hitting them where it hurts – their wallets.

Our communities are benefiting from the hard work of prosecutors and police putting ill-gotten gains to good use through our CashBack for Communities Programme, which invests crooks’ cash in facilities and activities for our young people and their communities across the length and breadth of the country.

Since CashBack for Communities began in 2007, over £50 million recovered from the proceeds of crime has been invested or committed throughout Scotland, directly benefitting over 600,000 young people and generating over 11,000 volunteers who are now putting something back into their communities.

FATF

**New Guidance issued**

***Guidance for a Risk-Based Approach to Prepaid Cards, Mobile Payments and Internet-Based Payment Services***

New and innovative payment products and services are being developed and used at an ever-increasing pace and have the potential of being used for money laundering or terrorist financing. This guidance examines how these payment products and services work, and how to develop and implement AML/CFT measures in line with the risk-based approach.

***The Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction***

This FATF guidance assists countries in implementing not only targeted financial sanctions, but also other measures, such as activity-based financial prohibitions and vigilance measures.

***Politically Exposed Persons (Recommendations 12 and 22)***

The FATF has developed guidance which will assist in the effective implementation of AML/CFT measures to business relationships with politically exposed persons (PEPs). Many PEPs hold positions that can be abused for the purpose of laundering illicit funds or other predicate offences.

A politically exposed person is an individual who is or has been entrusted with a prominent function. Many PEPs hold positions that can be abused for the purpose of laundering illicit funds or other predicate offences such as corruption or bribery. Because of the risks associated with PEPs, the FATF Recommendations require the application of additional AML/CFT measures to business relationships with PEPs. These requirements are preventive (not criminal) in nature, and should not be interpreted as meaning that all PEPs are involved in criminal activity.

The FATF has developed guidance which will assist in the effective implementation of these additional measures for foreign, domestic and international organisation PEPs, their family members and close associates, as set out in Recommendations 12 and 22.

Key to the effective implementation of Recommendation 12 is the effective implementation of customer due diligence requirements: for financial institutions to know who their customers are. External sources of information for determining PEPs exist, such as commercial and other databases, and the paper provides some guidance on the use of these, and other, external sources of information. ***However, these databases are not sufficient to comply with the PEPs requirements, nor does FATF require the use of such databases. (The author has long since doubted the reliability of such databases which are all too frequently the sole method used in practice to try and identify a potential PEP).***

The annex to the guidance sets out a collection of red flags and indicators for suspicion that can be used to assist in the detection of misuse of the financial systems by PEPs during a customer relationship. Examples of such red flags are the use of corporate vehicles to obscure ownership by PEPs, information being provided by the PEP being inconsistent with other publicly available information (such as asset declarations and published official salaries), or doing business with PEPs that are connected to higher risk countries (such as those for which FATF issues public statements) or high risk industries or sectors.

The report can be found here: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>

### ***International Best Practices: Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Recommendation 6)***

This paper provides best practices which will help countries in their implementation of the targeted financial sanctions regimes to comply with the United Nations Security Council Resolutions (UNSCRs) relating to the prevention and suppression of terrorism and terrorist financing.

## **FATF Public Statements**

The latest FATF statements on high-risk and non-cooperative jurisdictions/Improving Global AML/CFT Compliance: on-going process, were issued on 21 June 2013 and can be found here: <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/compliance-june-2013.html>

## **Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals**

Criminals seek out the involvement of legal professionals in their ML/TF activities, sometimes because a legal professional is required to complete certain transactions, and sometimes to access specialised legal and notarial skills and services which could assist the laundering of the proceeds of crime and the funding of terrorism.

The report identifies a number of ML/TF methods that commonly employ or, in some countries, require the services of a legal professional. Inherently these activities pose ML/TF risk. When clients seek to misuse the legal professional's services in these areas, even law abiding legal professionals may be vulnerable. The methods are:

- misuse of client accounts;
- purchase of real property;
- creation of trusts and companies;
- management of trusts and companies;
- managing client affairs and making introductions;

- undertaking certain litigation; and
- setting up and managing charities.

The report also describes red flag indicators of ML/TF which may be useful to legal professionals, self-regulatory bodies (SRBs), competent authorities and law enforcement agencies.

In this report, over 100 case studies referring to these and other ML/TF methods were taken into account. Some of these case studies show that not all legal professionals are undertaking client due diligence (CDD) when required. Even where due diligence is obtained, if the legal professional lacks understanding of the ML/TF vulnerabilities and red flag indicators, they are less able to use that information to prevent the misuse of their services.

The report also challenges the perception sometimes held by criminals, and at times supported by claims from legal professionals themselves, that legal professional privilege or professional secrecy would lawfully enable a legal professional to continue to act for a client who was engaging in criminal activity and/or prevent law enforcement from accessing information to enable the client to be prosecuted.

The report can be found here: <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>

### INTERNATIONAL ROUND-UP

#### **Possible rejection of deferred prosecution agreement could mean criminal prosecutions for HSBC**

It was reported by The Guardian that a deal agreed between US authorities and HSBC following evidence of the bank's money laundering has potentially fallen through as a result of a dispute between the justice department and the presiding judge. Judge John Gleeson is understood to be challenging the deferred prosecution agreement (DPA), which could see HSBC facing criminal prosecution and it could also be banned from undertaking business in the US.

The DPA was brokered in December 2012, and meant that although HSBC would face a \$1.9bn fine, it would not face prosecution for illegally undertaking transactions for customers, including drug lords and terrorists, in countries which are the subject of US sanctions. The deal was widely criticised when announced, and the lack of criminal charges was described as 'inexcusable' by Senator Chuck Grassley.

The row is believed to stem from the justice department's challenge to the need to get Gleeson's approval for the DPA.

There is recent precedent of judges refusing to sign a DPA. An agreement between Citigroup and the Securities and Exchange Commission was blocked by Judge Jed Rakoff in 2012, for being '*neither reasonable, nor fair, nor adequate, nor in the public interest*'. The dispute in this case is continuing.

Court officials have refused to comment.

### **Jyske Bank Gibraltar Ltd v Administracion del Estado**

The Court of Justice of the European Union made a preliminary ruling concerning the interpretation of art 22(2) of Council Directive (EC) 2005/60 of the European Parliament and of the Council (on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing).

The request had been made in proceedings between Jyske Bank Gibraltar Ltd (Jyske), a credit institution situated in Gibraltar operating in Spain under the rules on the freedom to provide services, and the Administración del Estado concerning the decision of the Spanish Council of Ministers, which had rejected the application for review brought against the decision of that Council of Ministers, imposing on Jyske two financial penalties for a total amount of €1,700,000 and two public reprimands following a refusal or lack of diligence to provide the information requested by the executive service for the prevention of money laundering.

### **Spy, monsignor and banker arrested in Vatican bank fraud 'plot'**

It was reported by *The Telegraph* that an Italian spy, a Vatican official and banker have been arrested on suspicion of corruption and fraud involving an alleged plot to bring 20 million euros in cash into Italy from Switzerland aboard a government plane.

The arrests come just two days after Pope Francis appointed a special commission to oversee the Vatican's scandal-plagued bank, which is known officially as the Institute for Religious Works.

Monsignor Nunzio Scarano, 61, was arrested after allegedly trying to bring 20 million euros in cash into Italy from Switzerland aboard an Italian government plane, in an attempt to circumvent laws on importing cash.

The money allegedly belonged to three brothers from an Italian family of shipping magnates who wanted it returned to them, investigators said.

Msgr Scarano allegedly masterminded the plot with the help of a broker, Giovanni Carenzio, and an Italian secret service agent, Giovanni Maria Zito, who was suspended three months ago from Aisi, Italy's domestic intelligence agency.

The operation failed because Mr Carenzio, the broker, reneged on the deal, lawyers said.

Pope Francis named a commission to investigate the bank's legal structure and activities *'to allow for a better harmonization with the universal mission of the Apostolic See'*, according to the legal document that created it.

The announcement came after prosecutors in Salerno placed senior Vatican official Monsignor Nunzio Scarano under investigation for alleged money-laundering.

## INTERNATIONAL ROUND-UP

Scarano has said he did nothing wrong, though in an interview with the local daily, La Citta di Salerno, he acknowledged he received bad advice from his accountant.

The five-member commission includes two Americans: Monsignor Peter Wells, a top official in the Vatican secretariat of state, and Mary Ann Glendon, a Harvard law professor, former U.S. ambassador to the Holy See and current president of a pontifical academy.

American cardinals were among the most vocal in demanding a wholesale reform of the Vatican bureaucracy – and the Vatican bank – in the meetings running up to the March conclave that elected Francis pope.

The demands were raised following revelations in leaked documents last year that told of dysfunction, petty turf wars and allegations of corruption in the Holy See's governance.

It was the second time in as many weeks that Francis has intervened to get information out of the Institute for Religious Works, or IOR.

Correspondence about the content of this Bulletin may be sent to Richard Bell, LexisNexis Butterworths, Halsbury House, 35 Chancery Lane, London WC2A 1EL (tel +44(0)20 7400 2732; email [richard.bell@lexisnexis.co.uk](mailto:richard.bell@lexisnexis.co.uk)).

Subscription and filing enquiries should be directed to LexisNexis Butterworths Customer Services Department, PO BOX 1073, BELFAST BT10 9AS (tel +44(0)84 5370 1234 fax +44(0)20 8662–2012; email [customer.services@lexisnexis.co.uk](mailto:customer.services@lexisnexis.co.uk)).

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