

Money Laundering Law

A Regulatory bulletin from DLA Piper





R v Griffiths¹

This case involved two drug dealers who bought a property in 2001 for £43,000. A mortgage for the full purchase price was arranged by P. The drug dealers were later convicted of drug offences and while they were awaiting sentencing and confiscation proceedings they disposed of the property. At this stage the property was worth £150,000; however, they offered the property to P for the value of the outstanding mortgage, £43,000. A solicitor was engaged to carry out the conveyancing of this sale, for which he received his normal fee of £399.

The prosecution brought a case against both P and the solicitor. The prosecution argued that the sale was an attempt to frustrate the confiscation proceedings and the solicitor would have known enough about property prices to realise that the sale price was far below market value. It was therefore argued that both P and the solicitor should have known or suspected that the property represented the proceeds of crime.

The solicitor was convicted of failing to make the required disclosure, contrary to section 330(1) POCA 2002, and received a sentence of 15 months'

imprisonment. P was convicted of entering into or becoming concerned in a money laundering arrangement contrary to section 328(1) POCA 2002 and of acquiring criminal property contrary to section 329(1) POCA 2002 for which he received a sentence of three years' imprisonment.

The Court of Appeal allowed the appeals. The convictions were upheld but both of the sentences were reduced to 6 months and 27 months respectively.

In reducing the solicitor's sentence, the Court of Appeal highlighted that the

solicitor had committed a one-off offence. He was not wishing to engage in criminal activity but instead had lapsed from the high standards expected from solicitors. It was also emphasised that he had not sought to profit from the offence and he would face other consequences as a result of his conviction, namely the loss of his practice. He would also be struck off as a solicitor.

This case serves to remind legal professionals of their obligations with regard to money laundering and the harsh consequences they may face if they fall foul of the law.

¹ Source: Practical Law Company website, article titled 'Solicitors face prison for failing to observe money laundering legislation'

ARA - press releases

The Assets Recovery Agency ("**ARA**") has recovered two properties in Forest Gate worth £180,000 and £160,000 and a property in Leytonstone worth £190,000 after Ms Obialo died from a drug overdose. The drug overdose happened after Ms Obialo attempted to carry 12 packages of cocaine into the UK from Nigeria in her stomach.²

Following Ms Obialo's death, the Metropolitan Police became concerned that her income did not appear to provide her with sufficient funds to purchase the three properties mentioned above. As a result, the Metropolitan Police referred the case to the ARA. The ARA carried out an investigation, which revealed that Ms Obialo had funded the purchase of the three properties through monies obtained by drug smuggling, mortgage fraud and benefit fraud.

It is thought that once the mortgages on the properties have been paid off, the ARA will recover £80,000.

In October 2005 the ARA conducted a number of searches in Manchester in which they seized around 350,000 records.³ They have used this information to detect property which has been purchased using criminal funds. The ARA is now applying for Property Freezing Orders in relation to a number of properties in Manchester.

The High Court in London has granted the ARA an order freezing £1,579,127 worth of property in Manchester. The ARA alleges these properties have been bought by monies gained from money laundering, fuel smuggling and mortgage fraud.

Francis and Judy Murphy own nine of the properties involved, which are mainly based around the Trafford and Stretford areas of Manchester. The ARA has alleged these properties were purchased using money gained from money laundering and fuel smuggling in Ireland.

This month the ARA has successfully settled another case referred to it by the Northern Ireland Social Security Agency ("**NISSA**"). Mr Stevenson was convicted, in Northern Ireland, of 17 charges of fraudulently claiming social security benefit. Following conviction, the ARA sought to recover the monies Mr Stevenson had gained from this fraud.

Mr Stevenson fully co-operated with the ARA, which enabled the matter to be settled quickly and without any need for legal action. It was agreed that Mr Stevenson would pay £16,545.

Once again this case highlights how the ARA will work closely with NISSA to prevent anyone benefiting from a crime. Alan McQuillan, Deputy Director of the ARA, is hopeful that this case will send a clear signal to those committing benefit fraud that action against them will not stop with a conviction.⁴



² Source: Assets Recovery Agency website, press release dated 2 November 2006

³ Source: Assets Recovery Agency website, press release dated 21 November 2006

⁴ Source: Assets Recovery Agency website, press release dated 14 November 2006



Update on new rules for home reversions and Islamic home purchase plans

The Financial Services Authority ("**FSA**") published its final rules on home reversion plans and Islamic law-compliant home purchase plans on 30 October 2006, which will come into force on 6 April 2007.

'It will also ensure fairer treatment for consumers wanting to buy their homes in a way that is compliant with Islamic law, building on the work that we have already done in the field of Islamic financial services to improve consumer access to these products.'⁷

The new rules require firms undertaking these activities to be authorised by the FSA or exempt.⁵ The FSA has therefore been accepting applications since 6 November 2006 and Dan Water, FSA Director of Retail Policy, has advised firms to apply early to ensure that they are ready in good time for the new regime beginning in April.⁶

The new rules are designed to provide consumer protection, which is comparable to that already in place for similar products. Dan Water stated: 'It will also ensure fairer treatment for consumers wanting to buy their homes in a way that is compliant with Islamic law, building on the work that we have already done in the field of Islamic financial services to improve consumer access to these products.'⁷

The FSA has outlined the key benefits to customers of the new rules. These are:

- 1 firms offering these products must be fit and proper and appropriately resourced with staff competent to undertake this business;
- 2 consumers will get clear, concise and consistent information about a firm's services and products on offer (including appropriate risk warnings) so they can make informed choices;
- 3 consumers will get good quality advice and be sold suitable products which take account of their circumstances and needs; and
- 4 if things go wrong, consumers are able to obtain redress, if appropriate.⁸

⁵ Source: Practical Law Company website, article titled 'FSA publishes final rules for home reversions and Islamic home purchase plans'

⁶ Source: FSA website, article titled 'Green light for new home finance regulation'

⁷ Source: FSA website, article titled 'Green light for new home finance regulation'

⁸ Source: FSA website, article titled 'Green light for new home finance regulation'

JMLSG issues guidance for the credit union sector

The Joint Money Laundering Steering Group ("**JMLSG**") has published guidance for the credit union sector. The guidance will be included in Part II of the JMLSG 2006 Guidance and must be read in conjunction with Part I of the Guidance.⁹

In accordance with the rest of the Guidance, the credit union guidance promotes the use of a risk-based approach. The use of such an approach will enable resources to be focused on areas which are perceived as presenting the biggest risk.

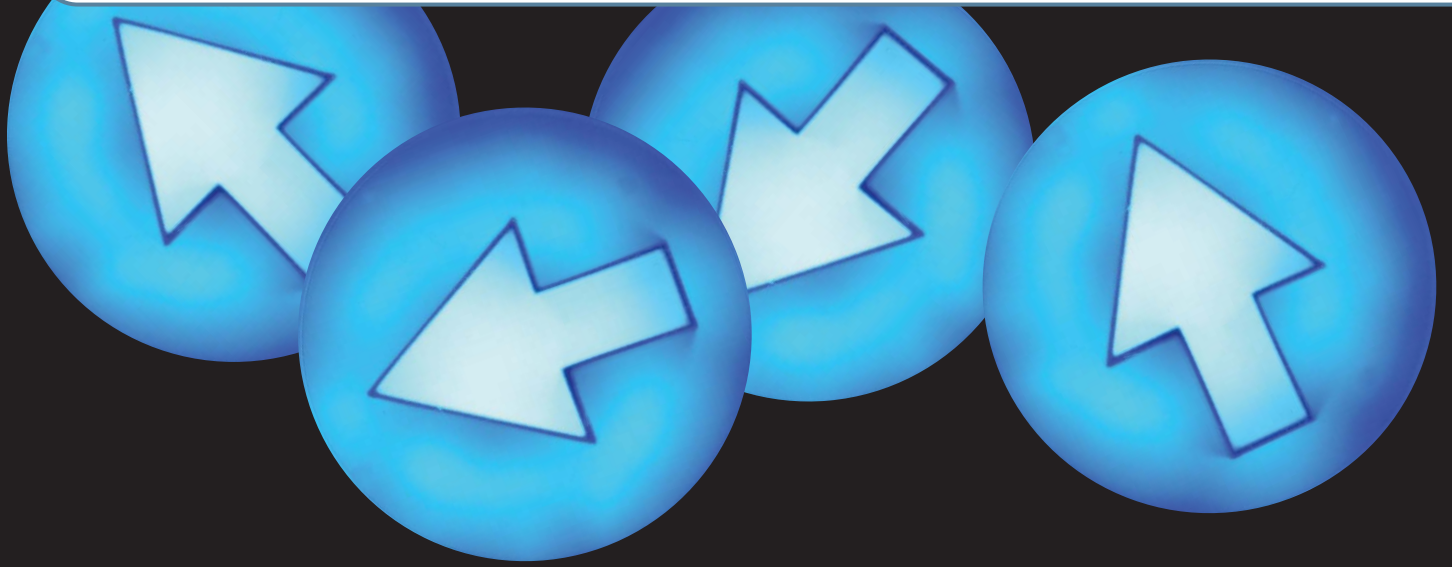
This sectoral guidance deals with a number of areas, including customer due diligence, employee credit unions, credit union activity in schools and internal controls and record-keeping.

It also addresses the question, "What are the money laundering and terrorist financing risks in credit unions?" It is accepted by the JMLSG that credit unions may not be money launderers, first port of call; however, the guidance does stress the need for credit unions to be aware of their responsibilities under the Money Laundering Regulations, the Proceeds of Crime Act and the Terrorism Act to ensure appropriate procedures are in place to monitor activities.¹⁰

The use of such an approach will enable resources to be focused on areas which are perceived as presenting the biggest risk.

⁹ Source: Practical Law Company website, article titled 'JMLSG issues additional anti money laundering/terrorist financing guidance for the credit union sector'

¹⁰ Source: JMLSG sectoral guidance for credit unions



Fraud Advisory Panel, 'Which Way Now? Evaluating the Government's Fraud Review'

The Fraud Advisory Panel ("**Panel**") is an independent watchdog, which is supported by the Institute of Chartered Accountants. It recently published a review called 'Which Way Now? Evaluating the Government's Fraud Review.'

In this review, the Panel emphasises its belief that the government is not allocating sufficient funds to the fight against fraud. A number of statistics are used to emphasise the impact fraud is having on society, for example, 'the harm caused by fraud is second only to the trafficking of the most dangerous drugs' and 'financial crime is officially recognised as costing the country at least £16 billion a year, £655 for every household'.¹¹

The Panel also outlines what it views as the major weaknesses in current policy. It was suggested that there is a lack of willingness by police forces to accept fraud reports due to insufficient resources being available. It was also suggested that whether or not a fraud gets investigated can often depend on whether the victim can afford to finance the investigation.

In addressing these criticisms, the Panel puts forward a number of recommendations for the future. These include strengthening the police response to fraud, establishing a centre to receive and analyse crime reports and improving the way fraud cases are handled in court. It is estimated that the cost of implementing the Panel's recommendations would be £27 million a year maximum.¹²

¹¹ Source: Fraud Advisory Panel, article titled "Whitehall Attitudes 'Crippling Fight Against Fraud'"

¹² Source: Fraud Advisory Panel, article titled "Whitehall Attitudes 'Crippling Fight Against Fraud'"

FSA guidance on dealing with Politically Exposed Persons

The Financial Services Authority ("**FSA**") visited 16 wholesale firms over summer 2006 to assess how effective their systems and controls are in relation to Politically Exposed Persons ("**PEPs**").¹³

The 2006 JMLSG Guidance recognised the increased risks associated with PEPs and set out guidance for firms to follow when dealing with them. It is recommended that firms do the following:

- have appropriate risk-based procedures to determine whether a customer is a PEP;
- obtain appropriate senior management approval for establishing or maintaining business relationships with such customers;
- take reasonable measures to establish the source of wealth and source of funds of such customers; and
- conduct enhanced ongoing monitoring of the business relationship.¹⁴

The FSA, following its assessments, has issued guidance on 'good practice', which should be followed by firms dealing with PEPs.

The main points are:

- regular forums should be held which are dedicated to PEPs;
- specific forms and procedures should be used when taking on a PEP as a new client; MLRO reports should contain a specific reference to the management of PEPs;
- there should be no automatic declassification of PEPs after the expiry of a prudential time period and firms should try to manage conflicts of interest by, for example, not rewarding account managers on the basis of how many accounts they have opened.¹⁵

'There should be no automatic declassification of PEPs after the expiry of a prudential time period and firms should try to manage conflicts of interest.'



¹³ Source: Practical Law Company website, article titled 'FSA issues good practice tips for dealing with Politically Exposed Persons'

¹⁴ Source: FSA website, article titled 'Politically Exposed Persons ('PEPs'): Good Practice'

¹⁵ Source: Practical Law Company website, article titled 'FSA issues good practice tips for dealing with Politically Exposed Persons'



Proposal for regulations to tighten controls on money transfers

The European Commission has made a proposal for tighter controls on money transfers in an attempt to cut off funding for terrorists and other criminals. This proposal has received the European Parliament's agreement at the first reading.

The proposed regulation is aimed at improving the traceability of money transfers. The regulations will apply to transfers of funds in any currency that are sent or received by a payment service provider in the EU. It will be mandatory that the name, address and account number of the sender of the transfer be transmitted with the funds, regardless of the amount involved. For money transfers within the EU there will be a simplified version of this regime to accord with the principle of the single market.¹⁶

The Council of Ministers is expected to vote on these regulations in the near future and the regulations were expected to come into force by 1 January 2007. These regulations will assist in bringing the EU into line with the recommendations made by the Financial Action Task Force.

It will be mandatory that the name, address and account number of the sender of the transfer be transmitted with the funds, regardless of the amount involved.

¹⁶ Source: EUROPA website, press release titled, 'Commission welcomes Parliament agreement on measures to tighten controls on money transfers'

The Fraud Act

In May 2004, the government decided to revisit recommendations suggested by the 2002 Law Commission report, and issued a consultation paper for proposals to reform the law of fraud. Following on from this consultation process, and to remedy the problems identified, the Fraud Bill was introduced in the House of Lords in May 2005. On 9 November 2006 the Fraud Act 2006 was published and this is due to come into force in early 2007.

The Act aims to clarify the current statutory fraud offences contained in a number of statutes, including the Theft Acts of 1968 and 1978, and introduces a new single offence of fraud. The new offence would carry a maximum sentence of 10 years and can be triggered in three ways:

- Fraud by false representation - for example, 'phishing' (when someone sends an e-mail to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the recipient into surrendering private information that may be used for identity theft).
- Fraud by failing to disclose information to another person where there is a legal duty to disclose - such a duty may derive from statute (such as the provisions governing company prospectuses), from the fact that the transaction in question is one of the utmost good faith (such as a contract of insurance), from the express or implied terms of a contract, or from the existence of a fiduciary relationship between the parties (such as that of agent and principal). For example, an offence would be committed under this head if a person intentionally failed to disclose a pre-existing heart condition when applying for life insurance.
- Fraud by dishonest abuse of position - this will apply when a defendant has been put in a privileged position, and by virtue of that position is expected to safeguard another's financial interests or not act against those interests. For example, where a person employed to care for the elderly or disabled uses his position to access their accounts in order to remove money.

The Act also introduces three new offences:

- I Obtaining services dishonestly - for example, a person who tenders an improperly obtained credit card to obtain services from the internet would be committing a crime under this offence. This offence can only be committed where the dishonest act was done with intent not to pay, and will replace the offence of obtaining services by deception in section 1 of the Theft Act 1978 (although the new offence does not contain any deception element).
- II Possession of, or making or supplying, articles for use in frauds - this would make it an offence to intentionally possess, manufacture or supply equipment, such as a computer program that can generate genuine credit card numbers, to be used to commit or facilitate fraud.
- III Knowingly participating in fraudulent business - this offence extends the existing offence of fraudulent trading by incorporated bodies contained in the Companies Act 1985 to businesses other than companies, such as sole traders.

By clarifying the law on fraud, the government is aiming to simplify the prosecution process and ultimately crack down on all forms of fraudulent behaviour. This is necessary to enable prosecutors to deal effectively with the increasing abuse of technology, particularly in relation to personal identity theft and credit card scams.

"New Powers Against Organised and Financial Crime"

The government issued a Green Paper, "New Powers Against Organised and Financial Crime", in July 2006, outlining its new proposals for tackling organised crime.

Comments were invited from law enforcement agencies, the judiciary and financial institutions and regulated bodies and the responses received were broadly supportive of the government's proposals. A summary of the responses was published in November 2006.

The government's main proposals outlined in the paper were:

- the introduction of information sharing across both the public and private sector - respondents welcomed this proposal and the government now intends to legislate to create a general power to allow cross-sector data-sharing on fraudsters. The government also proposed that all applicants for public services should have their details checked against a fraud prevention database;¹⁷
- placing the National Fraud Initiative on a statutory footing - respondents were very supportive of this proposal;
- suspicious activity reports should be matched against a range of public sector databases - this was also widely supported by the respondents;
- the introduction of a new offence aimed at those who assist in organised crime - respondents raised concerns over this proposal as some did not view it as necessary due to the more general offences also proposed by the government. The government still believes that this offence would be advantageous in criminalising indirect assistance, however, it has outlined its intention to discuss modifications to the proposed offence with the Law Commission;¹⁸

- the creation of a flexible civil order - respondents raised concern over their potential impact on third parties and therefore the government will require that any potential impact to third parties is brought to the court's attention by the prosecutor when applying for the order. The majority of respondents agreed that the orders should be flexible;
- the powers within the Proceeds of Crime Act 2002 should be enhanced - the majority of respondents were in favour of granting civilian financial investigators the same powers as those available to constables and officers of HMRC.

The responses show that many recognise the need to enhance the laws to deal with the evolving problems presented by organised and financial crime. It is important to try and stay one step ahead of the fraudsters and the government's proposals should assist with this.¹⁹

¹⁷ Source: www.crimereduction.gov.uk, Article titled, 'Response to Consultation Paper on Organised and Financial Crime'

¹⁸ Source: www.crimereduction.gov.uk, Article titled, 'Response to Consultation Paper on Organised and Financial Crime'

¹⁹ Source: www.crimereduction.gov.uk, Article titled, 'Response to Consultation Paper on Organised and Financial Crime'

EU and International News



First plenary meeting of the Financial Action Task Force

On 11 October 2006 the Financial Action Task Force ("**FATF**") held their first plenary meeting of the 18th session in Vancouver, Canada. Delegates from the Republic of Korea were in attendance for the first time as observers. This is the first step to obtaining full membership of the FATF.

The FATF is an international body, which is responsible for setting standards aimed at combating money laundering and terrorist financing.

The Honourable Jim Flaherty, Canada's Minister of Finance, opened the meeting. He made the purpose of the meeting very clear, 'We all know one basic fact. Terrorists need money. That's why we're here today. To make it harder for them to get it. To work together to find ways to starve them of the funds they need to finance their despicable ambitions.'²⁰ This set the tone for an informative and motivating opening to the meeting.

Mr Flaherty also outlined the steps being taken by Canada's new government to combat money laundering and terrorist financing. Firstly, in the government's first budget, additional investment was made to Canada's financial intelligence, police and border security organisations. Secondly, Canada is becoming increasingly involved with regional bodies such as the Asia/Pacific group which is fighting money laundering and terrorist financing within their own borders. Finally, the government has tabled new anti-money laundering and terrorist financing legislation. It is hoped

that this legislation will be passed by the end of this year and it will significantly strengthen Canada's laws on money laundering and terrorist financing by, for example, strengthening the 'know your customer' measures for financial institutions and requiring attempted suspicious transactions to be reported.

Mr Flaherty also emphasised that Canadians would be consulted in the future to ensure that any new measures imposed to strengthen the fight against money laundering and terrorist financing would not cost Canadians their right to privacy.

Following Mr Flaherty's opening, the plenary went on to consider a number of matters. Myanmar was removed from the list of countries and territories not cooperating in the international fight against money laundering ("**the NCCT list**"). It was determined that Myanmar has made good progress however, the FATF would continue to monitor it during the coming year to ensure further progress is made. It was reported that all of the 23 jurisdictions on the NCCT list in 2000 and 2001 are no longer on this list due to the significant progress they have made.²¹

It was also reported that the FATF has issued two reports on money laundering methods and vulnerabilities in specific sectors. One report, which is now published, deals with new payment technologies, for example, internet payment systems and mobile payments. The report found that money laundering and terrorist financing vulnerabilities did exist within these new payment methods. More specifically, cross-border providers may pose more of a risk than providers operating within a particular country.²² Another study on corporate vehicles was conducted and this has now been published. It was found that corporate vehicles are used for money laundering and terrorist financing however, the level of misuse could be reduced if governments had access to information about the beneficial owner, the source of the assets and the business objective of the company or trust.²³

The FATF outlined further studies which are currently under way into a variety of areas, namely real estate, terrorist financing, VAT fraud and drug trafficking.²⁴

²⁰ Source: Address by the Honourable Jim Flaherty, Minister of Finance, at the Opening of the First Plenary Meeting of the 18th Session of the Financial Action Task Force, held on 11 October 2006 in Vancouver, Canada

²¹ Source: Financial Action Task Force, Chairman's Summary of Vancouver Plenary, 9-13 October 2006

²² Source: Financial Action Task Force, Article titled 'New Payment Methods Report Published'

²³ Source: Financial Action Task Force, Article titled 'Report on Misuse of Corporate Vehicles Published'

²⁴ Source: Financial Action Task Force, Chairman's Summary of Vancouver Plenary, 9-13 October 2006

FATF's evaluation of anti money laundering and counter-terrorist financing standards in Portugal and Iceland

The FATF undertook an assessment of Portugal's implementation of anti money laundering and counter-terrorist financing standards. This is the ninth country to be examined by the FATF in the third series of its member evaluations.²⁵

The FATF found that Portugal had comprehensive legislation on combating terrorist financing and a sound legal framework to combat money laundering. It was also held that Portugal has a clear and complete framework for providing international co-operation. The main criticisms outlined by the FATF was the relatively low number of money laundering convictions and the relatively low number of STRs received.

The FATF also undertook a mutual evaluation of Iceland. It was found that Iceland has a strong system for domestic co-operation and the legislation on combating terrorist financing is generally comprehensive. The FAFT, however, did make a number of criticisms about Iceland. The FATF held that the available penalties and number of convictions for money laundering offences were low and it was held that the system for freezing suspected terrorist financing-related assets should be strengthened. The Icelandic FIU is part of the Economic Crime Unit of the Icelandic Police. It is responsible for the receipt, analysis and dissemination of STRs. The FATF expressed concern about the structure, resources and results of the FIU, however, Iceland is now addressing these issues and it is hoped that improvement will be seen very shortly.²⁶

²⁵ Source: Financial Action Task Force, Article titled 'Mutual Evaluation: Portugal'

²⁶ Source: Financial Action Task Force, Article titled 'Mutual Evaluation: Iceland'

African aid fraud case

The Lesotho Highlands Water Project was the largest bi-national construction project ever in Africa.

The EU first became involved in this project in the early 1980s. The total of the European Development Fund financing for the project totalled 61.2 million euros.²⁷

The first suspicions about fraud and bribery arose in November 1999 and investigations have been taking place since then. Three companies were involved, which were incorporated in France, Italy and Germany respectively.

The Chief Executive Officer of the project was found guilty of bribery by the High Court of Appeal of Lesotho and he is currently serving a 15-year prison sentence.

The company incorporated in France pleaded guilty and was convicted of 16 counts of bribery and fined a total of 1.19 million euros. The company incorporated in Italy pleaded guilty to the alternative charge of attempting to pervert the course of justice and was fined 1.62 million euros. Finally, the company incorporated in Germany was found guilty on eight counts of bribery and was fined a total of 1.6 million euros.

A representative of the European Anti-Fraud Office (OLAF) expressed concern. 'While the fines imposed on the companies amount to 4.41 million Euros, the exact amount of the financial damage inflicted on EU financial interests through the criminal acts could not be established.'²⁸



The Chief Executive Officer of the project was found guilty of bribery by the High Court of Appeal of Lesotho and he is currently serving a 15-year prison sentence.

²⁷ Source: EUROPA website, OLAF press release titled 'Three European Companies Guilty in African Aid Fraud Case'

²⁸ Source: EUROPA website, OLAF press release titled 'Three European Companies Guilty in African Aid Fraud Case'

For further information please contact:

Daren Allen, Partner, London Office

T: 020 7796 6824

E: daren.allen@dlapiper.com

F: 020 7796 6839

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A list of offices can be found at www.dlapiper.com

UK switchboard +44 (0) 8700 111 111



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