



Things an MLRO should know when facing prosecution by the CPS

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Background

- **Introduction**
- Compliance Manager and MLRO of a large spread betting company
- Over 25 years industry experience
- Worked for that firm for 10 years
- Staff were well trained
- AML training



Background to suspicion

The Clients

- February 2005
- Two clients –one aged 18 the other in his 30s
- One in his 30s was granted a credit allocation the other client wasn't (due to his payment history).
- **Credit requirements:**
- Client must supply Recent original or certified documents
- Proof of 5 times the amount of credit being sought.

Background to Suspicion

Suspicious and Falsifications



- Early February 2005
- Both clients owed the firm money
- Employees suspected that the client in his 30s who was granted credit may have provided forged proof of funds.
- That Bank's Fraud department confirmed the Bank statement was false.
- A report was sent to CoLP – credit by deception.
- Police quick to respond; arranged a meeting in our offices.

Similarities between the Clients



- The firm's Credit Department established similarities between this client and the 18 yr old client.
 - Similar trading patterns
 - Both banked with same bank and branch
 - Bank statements certified by the same law firm.
 - Even Mobile number was the same
- The Bank's fraud department confirmed the 18yr old client's bank statement had also been falsified. (But he had no credit).
- Police informed.

Background to suspicion

Receipt of Funds

- 14 Feb 2005
- The 18yr old paid in over £40k to the firm (unaware that the firm had other white label trading names).
- Existing debt of over £10k
- Keen to trade his account
- Account is under review
- CoLP unable to identify any law he has broken
- Have these funds been paid in from stolen cards?
- Persistent client calls to establish whether he can continue to trade

Background to suspicion

17.02.2005



- Police established that recent Delta card transactions came from his own bank accounts.
- No obvious evidence of crime
- Possibility of a conspiracy to de-fraud the company
- The police confirm both clients are genuine – not aliases

Background to suspicion Solicitors



- Legal advice to defer payment to client
- Our fear was the client would vanish if we caused him to become suspicious (inadvertent tipping off)
- Police wanted to interview him in 2 weeks
- Decision made to ban him from trading
- Client wanted his funds returned immediately
- Credit Department agreed

Background to suspicion

18.02.2005 Solicitors



- **2nd call with same law firm**
- Situation explained to another Solicitor
- Possibility that his monies have been acquired immorally or illegally
- Solicitors advised me **'for my protection'** to send fast track (consent) report to NCIS (even though the police had already been informed)
- Stall the payment as long as possible
- Solicitor maintained that NCIS normally provided response within 24 hours

Background to suspicion NCIS Report



- Client already calling continually to chase his payment
- 18 Feb 05 am - Fast track disclosure e mailed and biked to NCIS
- *Advice – Always ensure that the disclosure is as brief and to the point as possible. SOCA do not want to look through volumes of paper.*

Background to suspicion

21.02.2005



- **NCIS**
- NCIS contacted several times
- No record of my disclosure
- Advised consent can take up to seven working days
- Withholding payment might alert the client
- Risk of tipping him off
- Police keen to interview him
- NCIS – unable to offer any advice or help

Background to suspicion Dilemma



- **Further calls with Solicitors – 21 Feb 2005**
- Unique circumstances – solicitors unsure of what action to take
- We did not wish to pay him
- Could not risk tipping him off - likely to disappear abroad
- Solicitors unable to provide any solid guidance

Background to suspicion

- NCIS contacted on several occasions chasing for consent
- NCIS had sent report to customs and excise – not CoLP
- Client called regularly, suggesting he will personally collect the money
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Background to suspicion Guidance

- JMLSG Guidance the only useful guidance in this situation.
- NCIS website - only mentioned that ‘tipping off’ was a complex area of law and guidance would be given the future

Background to suspicion – Decision



- Didn't want to pay the client
- Couldn't provide him with the reason for withholding payment without causing suspicion
- We knew the police planned to interview both clients in 2 weeks time
- Solution to delay another day and pay by debit card
- Rationale for decision:
 - Client does not bank with our Bank
 - payment should not reach his account for 3-5 business days
 - Firm should be able to cancel payment if NCIS refuse consent



22.02.2005 Client Repaid

- Client claims he had unhedged positions in market
- Client already very suspicious + becoming aggressive
- He had received other post from the firm but not his cheque
- Main concern - he will vanish (due to our actions) before the police can speak to him
- Given that he did not appear to have broken any law we considered it unlikely that consent would be refused
- His funds were returned by debit card
- *Even if others including bosses are involved in the decision, the MLRO is the person who must have the final decision and is the person who takes responsibility if things go wrong.*

24.02.2005 Consent Refused

- CoLP called to refuse consent
 - Payment had already been made
 - I explained rationale for our decision
 - Offered to contact our bank to attempt to hold the transfer
 - NCIS also called to refuse consent
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- *We considered the matter closed and assumed given the circumstances the police were satisfied with our actions.*

Police interview

- Two months later, call from CoLP inviting me to attend an interview regarding this matter
- Interview under caution
- It was not obligatory
- I had the right to refuse to attend or terminate the interview at any point
- The firm advised me to take a solicitor
- Prior to the police interview, I was advised by the firm's solicitor what to say and not to say or do

Cooperation at a police interview

- 29.04.2005, I attended an interview with a solicitor (interview under caution) lasting approximately 90 minutes.
- Friendly interview
- Recorded
- A full explanation of our actions provided
- At the end of the meeting after the tapes were switched. The solicitor had opportunity to speak.



Police interview

- Express views / opinions
- We had established that the client had opened an account with many other firms
- **Our firm was the only one to refer the matter to the police or NCIS**



May 2005

- On 5 May 2005 I left that company to join their competitors
- The FSA were informed and were unable to register me with my new employers until the matter with police was resolved
- New Firm was informed and very sympathetic – Continued as CO and MLRO without the registration
- I heard nothing from the police for months
- CoLP chased – but matter was being considered very carefully.

September 2005 Decision to prosecute



- **Police call**

- CoLP broke the bad news
- Tone of the conversation very casual
- Made arrangement to go to the Police
- Only my bosses and FSA informed

- **The Arrest**

- **15 September 2005 –**
- Snowhill Police station – attended alone
- PoCA 2002 s336 consent

Preparation for court

- My new employers were supportive and offered to contribute towards my legal costs
- Recommended a solicitor
- First call with solicitor
- Meeting with solicitor

First Court Appearance

- October 2005
- City of London Magistrates Court
- Committal papers not served
- Tapes of the Police interview (Feb 2005) also not available
- New date set 4 weeks later (October)
- Meanwhile press were made aware and Daily telegraph published an article



Preparation for 2nd appearance

- FOA – meeting with FOA Anthony Belchambers and Hugo Jenkins
- Former colleagues very supportive – tapes of conversations sent to me and other evidence.
- Former employer offered to contribute towards legal costs.
- D&O policy

2nd Court Appearance



- **November 2005**
- City of London Magistrates Court
- Received tape of Police interview
- Committal papers arrived 2 days beforehand
- Unable to make any representations
- Duty officer helpful comments
- Costs
- 3rd date set for January 2006



Back in the office

- FSA registration still not possible
- Matter widely discussed at Compliance seminars
- Case featured heavily in Compliance articles
- Carried on as normal with new employer
- Police continued to ask me to provide witness statements on other cases, but not for the clients I had reported in Feb
- There was considerable support received from industry, various police officers and other authorities.

3rd Court Appearance



- 19 January 2006
- CPS wanted 2 weeks to reconsider the case
- Strong arguments for and against prosecution
- More helpful comments from prosecution.
- Given 3 weeks to reconsider

- Letter from FOA to CPS
- Solicitor letter to CPS
- Evidence strengthened my case

Further court appearances

- CPS – decided to continue with prosecution despite our representations -
- Prosecution & Defence insisted it was too complex for magistrates
- Case referred to Croydon Crown Court

- QC employed
- Several further CCC appearances
- Legal cost mounting
- D&O policy – possible problems



Main Concerns

- Will the D&O policy cover cost if I lose the case?
- Will I be required to pay the prosecution costs?
- If I lose the case the FSA unlikely to register me as an MLRO or Compliance Officer
- Loss of reputation
- Possible jail term (5 years maximum) unlikely
- A large fine (also considered unlikely)
- Required to provide my name and address at each court appearance – concerns that the clients reported will take revenge

CPS offer to accept a caution



- Hours every day transcribing over 100 telephone calls -Solicitors gaining confidence
- During March CPS offered to drop the case if I accepted a caution
- A Caution - a criminal record
- FSA hinted that MLRO registration might be a problem
- Offer discussed + rejected
- Was a jury likely to find me guilty?

Croydon Crown Court



- Several Court appearances at Croydon
- Weeks spent studying PoCA 2002 and JMLSG Guidance 2003
- QC and Solicitor very confident
- Court date eventually set for 21 – 23 August 2006.
- All parties (witnesses included) needed to be available for those dates
- Defence had many strong arguments
- CPS tried to change the date of trial – unsuccessfully

- CPS drop the case –
- They needed to prove funds returned to client were Criminal Property – offered no evidence

Final Court Appearance

- Defence had several strong arguments
- CPS – Admitted they could not prove funds were criminal property –
- Not in the public interest to delay court case further.

- No mention of conflict between PoCA s333 & s336 (Tipping off and Consent)
- No mention of difference to FSA's approach
- No mention of JMLSG Guidance
- CPS paid legal costs
- Whatever happened to the original SAR?



MLROs.com

- **MLRO Protection**
- MLROs.com has put together an MLRO Protection Committee, which will assess any future such case against an MLRO so as to ascertain if it can assist or not.
- The idea is that should another Stephen Judge type case occur, then there is a place an MLRO can go to seek assistance from fellow professionals.
- The Committee is made up of the following:
 - Ben Hur Compliance Officer and MLRO NIBC, Chairman
 - Steve Hancock MLRO the PRU and Chairman IMLPO
 - Darren Allen Solicitor and MLRO for DLA
 - Andrew Carnes Barrister (AML specialist)
 - Stephen Judge MLRO (and Compliance Officer) at ETX Capital