Attorney General and Bell and Caversham Trustees Limited and Caversham Fiduciary Services Limited

Trial heard by the Royal Court on October 13th, 2005
Sentencing took place in the Royal Court on November 25th, 2005.
Decision upheld by the Court of Appeal on January 27th, 2006.

Facts
In 2002, Mr Bell, the alter ego of Caversham, was contacted by an English solicitor on behalf of a Mr Stevens. He said that Mr Stevens was acting on behalf of a Mr Lee. He, Mr Stevens, had received monies in respect of the sale by Mr Lee of a sauna in London and they now wished to reinvest those monies. The solicitor said that Mr Lee was non resident and wished the monies to be kept offshore in the first instance. A discretionary trust was requested and the assets conveyed into the trust were described as 'sale proceeds for Mr Lee'.

No steps were taken to verify the identity of Mr Lee, the disclosed principal.
A few days later, the sum of £850k was paid into Caversham's client account and was then transferred to the client account of the Trust company.
Immediately after the monies had been received, Mr Bell was given instructions to pay away £825k to four unknown third parties.
The next day, the trust which had been requested was set up with Mr Stevens as sole beneficiary.
The next working day, Caversham made the payments.

Law
Article 2(i) of the Money Laundering (Jersey) Order 1999 provides (so far as is relevant) that:

No person shall, in the course of any financial services business carried on by him or her in Jersey, form a business relationship with or for another person unless –

(a) the person carrying on the financial services business maintains the following procedures in relation to his or her business –

(i) identification procedures in accordance with Articles 3 and 5

(iv) such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering.

Where the applicant for business appears to be acting on behalf of another, that other person's identity must be checked.
The actual steps that should have been taken to verify identity do not concern us since no steps at all were taken.
Furthermore, the Anti-Money Laundering Guidance Notes to the Finance Industry state that if verification of identity has not been completed prior to entering into a business relationship, assets should not under any circumstances be paid away until identity has been verified.

The Defence seems to have argued that the offence was a ‘systemic offence’ and that therefore the offence only arose after a series of failures in procedures.

The Court rejected this argument and held that the offence was an ‘absolute offence’ and by that it meant that once it was established that identity had not been checked at the appropriate time the only circumstances in which a conviction could be avoided would be by bringing yourself within the statutory defence (provided by Article 37(10) of the Proceeds of Crime (Jersey) Law 1999) of having taken reasonable steps and exercised due diligence to avoid committing the offence.

The decision was upheld by the Court of Appeal on January 27th 2006, but their reasoning has not yet been published.

It seems possible to assume, however, that they agreed with the Royal Court that unless the defendant could successfully plead the statutory defence the offence was made out by mere proof of the actual failure to verify identity.

The lessons are obvious.

It is not enough to create procedures - you apparently have to have effectively foolproof controls to ensure that your procedures are always implemented.

What brings a defendant within the statutory defence? The Commissioner is reported as saying that ‘one breach, if it is more than a mere oversight, is in my view sufficient for the purposes of a criminal trial ...’

Hopefully there will be more guidance from the Court of Appeal as to what amounts to a ‘mere oversight’.

Fines

The company defendants were fined a total of £65k and Mr Bell was fined a total of £35k, with six months’ imprisonment in default. It appears that Mr Bell’s fine would have been higher if it had been shown that he could afford to pay more. It appears likely that all fines would have been higher and imprisonment would have been a real possibility if actual money laundering had occurred.

Harold Burnett QC
31st January 2006