

Michael Levi, Cardiff University Utrecht, 2011 Levi@Cardiff.ac.uk

LAWYERS AND ML IN THE UK

Information & Intelligence Sources

1. investigations into major crime networks - 'organised' and 'white-collar' - that throw up suspicions and evidence of *active* lawyer assistance
2. suspicious transaction reports made by bankers and fellow professionals
3. the collapse of professional firms or business enterprises that generate information about lawyers' culpable involvement
4. the boldness and powers of the investigative authorities and their priorities

Sources for this study

- the very modest number of criminal prosecutions for laundering by solicitors
 - 14 cases in England and Wales, 1999-2011
- the rather more common number (in England and Wales) of solicitors' disciplinary cases connected to criminality
 - 24 cases 2005-2011
- interviews with/case papers from investigating officers from UK regulatory, criminal intelligence, and law enforcement agencies.

Lawyers' usefulness in crimes

- Using their firm's reputation, wittingly or unwittingly, to enhance the credibility of fraud schemes;
- as sole persons licensed to transfer property in some jurisdictions;
- as persons able to establish corporations and other special purpose vehicles to facilitate the transfer of (i) wholly licit, (ii) illicit-source, and (iii) licit-source funds that aim to evade controls on bribery, tax liability, and exchange control;
- as enablers of laundering by introducing criminals to financial institutions as their clients & lending their clients' accounts to criminals for cash deposits that otherwise would be regarded as suspicious;
- as lenders of office premises to criminals for generally unsurveilled discussions, abusing confidentiality;
- as knowledgeable *principals* in fraud and laundering

Risk factors in lawyer misconduct

- Structural – lawyers' ability routinely to receive & transfer large amounts of client monies in secret makes them attractive to fraudsters and money launderers;
- Internal to the lawyer – ways of practising, personal/ financial problems, lifestyle and personality, poor career profile and need to generate income for partnership by gaining new clients and/or not losing existing ones;
- External to the lawyer-client relationship – such as macro-economic conditions and changes in the level/structure of demand for the legal services provided by the particular lawyer or type of lawyer

Recent Case 1

- Solicitor convicted of money laundering and undertaking £650,000 worth of fraudulent mortgage transactions. Acted on behalf of his friend, David Carl Richards (a convicted drug trafficker) to fraudulently secure mortgage advances and launder the proceeds of crime through the purchase of properties in the Neath and Swansea Valleys.

Recent cases 2

- UK solicitor assisted in the purchase of a number of properties for a drug dealer where he knew or suspected that the funds were criminal property. He was criticised by the court for not looking behind alleged 'cultural customs'.
- UK solicitor based in Monaco became involved with the directors of a football club. The directors fraudulently paid themselves a bonus, created an invoice to a company to make it look legitimate. The company then paid the solicitor, who put the funds through an account of his in Florida and then helped one of the directors purchase a property.

Recent cases 3

- Acted for client who had stolen a painting, trying to get it removed from the arts theft register and sell it (perjury, perverting the course of justice and entering into an arrangement to facilitate money laundering).
- Received and paid in cash bail monies which he knew or suspected were the proceeds of crime (transferring and possessing criminal property).
- Had large amounts of unexplained cash in envelopes in the office with the names of clients on them (possessing criminal property and failing to disclose).

Recent cases 4

- Undertook the conveyance of a property owned by known convicted drug dealers (who were awaiting sentence and confiscation hearing) at an undervalue to an estate agent. Only took his normal fee.
- Court accepted that he did not know or suspect that there was criminal property involved, but because he had been served with production orders about other property dealings with the drug dealer's family and there were warning signs – it was held that a reasonable solicitor would have known and would have made a report.

SDNY Federal laundering cases 2009: Frequency of Lawyer

Lawyer Involvement	Frequency	Percent
Total number of cases	40	100
No lawyer involvement	30	75
Lawyer Self-Directed Scheme; lawyer is a defendant in the case	4	10
Lawyer mentioned in case as facilitating or present at transaction, but not charged as defendant	2	5
Lawyer not mentioned, but required for transaction	3	7.5
Lawyer not mentioned or required, but high likelihood of involvement	1	2.5
Total Lawyer Involvement of any kind	10	25

Predicate Crimes/Lawyer Involvement 2009

Predicate Crime	Frequency	Percent
Drug Trafficking	13	32.5
Other Blue Collar	1	2.5
White Collar	27	67.5
Terrorism Financing	2	5
Bribery/Corruption	3	7.5
Organized Crime	2	5
Illegal Gambling	3	7.5

Transactions Used to Launder 2009

Transaction used to Launder Money	Frequency	Percent
Real Estate	4	10
Purchased Goods	6	15
Lawyer Trust Account	3	7.5
Wire Transfers	23	57.5
Monetary Instruments	23	57.5
Other Bank Transactions	13	32.5
Shell Corporations	9	22.5
Buying and Selling of Companies	0	0
Funnelled through an Operating Business	8	20
Delivery of Bulk Currency	2	5
Hawala	0	0
Other	0	0

The UK reporting regime

2009/10

- 4,612 SARs from solicitors 2009-10 (4,772)
 - 11,300 in 2007
- 6,411 SARs from accountants (6,390)
- 89 SARs from tax advisers (96)
- 11 SARs from barristers (6)
- 56 SARs from company formation agents (73)
- 301 SARs from licensed conveyancers (160)
- 129 SARs from estate agents (135)
- Few public case studies from lawyer SARs

Trends and Issues

- Shift to Alternative Business Structures, so non-lawyers can own law firms from October 6 2011
- Clementi report (2004: para 37) on the risks:
 - 'Opening up ownership brings the risk of inappropriate owners of a legal practice. A few have given short answers as to why only lawyers should be 'fit to own' a legal practice; this has been to refer to whoever they regard as the villain of the moment or, in default, "Robert Maxwell Legal". There is a point to be addressed on the issue of "fit to own". But ..the words "South Sea Bubble" would not have been a sufficient reason for our forefathers to have prevented all new public share offers.'
- Let us now turn to a model of prevention, recognising that prosecutions will be few

<i>Increase the perceived effort</i>	<i>Increase the perceived risk</i>	<i>Reduce the anticipated reward</i>	<i>Reduce provocations</i>	<i>Remove excuses</i>
Money Laundering Regulations 2007 require checking of identity of client amongst other things	Criminal sanction for breach of Money Laundering Regulations	Loss of professional status with consequent financial loss – if firm otherwise viable. (If not, then no immediate opportunity cost)	By information campaigns and professional rules, enable lawyer to point client to clear prohibition and therefore reduce pressure to comply with dubious instructions	Information campaigns such as the publication of Warning Card
Need to construct a 'genuine' transaction because professional rules require money to be transferred by lawyer only in normal course of a solicitor's business	Professional sanction or protective action for breaches, particularly failure to keep proper records	Disruption: 1. take dishonest clients' assets 2. close down law firm, taking possession of all money and documents		Inclusion in professional rules
	Extend guardianship by: 1. Requiring law firms to have compliance partner 2. Tasking lawyers' own accountants with monitoring compliance 3. Back up monitoring of compliance by regulator			Publicise regulatory action against offenders
	Study methodologies to understand how laundering is facilitated – and publicise results			Simplify laws and rules to reduce neutralisation and rationalisation

Federation of Law Societies of Canada v. Canada, 2011 BCSC 1270

- Section 7 of the *Charter of Rights and Freedoms* provides that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Federal money laundering legislation jeopardizes the liberty of clients, because lawyers would be required to collect information from their clients to establish a paper trail for law enforcement agencies to access, and this is contrary to the expectations of confidentiality when they communicate with legal professionals.
- Lawyers are prohibited from accepting more than \$7,500 in cash to guard against trust accounts being used for illegal activities; "know-your-client" rules mean providing advice only to bona fide clients whose identity can be reliably ascertained.
- Lawyers, Quebec notaries, and legal firms in Canada now excluded from the list of persons and entities subject to the federal legislation.

Summary

To the extent that professionals can be trusted to retain secrecy, the risks to 'primary offenders' (drugs traffickers, fraudsters, tax-evading businesspeople, terrorists) of making a mistake in assuming their individual 'corruptibility' are especially low: the downside risk is simply rejection as a client. The lawyer's temperament and 'skills' at not noticing client behaviour, as well as temptation levels, influence the outcome of this more general vulnerability: fraud/AML strategies based on the view that an isolated small sub-group can be identified will miss many cases.