


Prosecuting Serious and Complex Fraud

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Matthew Wagstaff, Head of Division,
Central Fraud Group,
Crown Prosecution Service



Overview

- ❑ Fraud – an overview
- ❑ The Crown Prosecution Service
- ❑ The Central Fraud Group
- ❑ Prosecuting complex fraud
- ❑ Prosecuting carousel fraud

Fraud in the United Kingdom

- ❑ NFA estimates that cost of fraud to the UK economy is approx. £30bn p.a.
- ❑ Value and volume of fraud is increasing substantially
- ❑ Fraud is diversifying in geography, type and complexity
- ❑ Technological advances make the investigation and prosecution of fraud even harder

Tackling fraud – the UK approach

- ❑ A wide variety of organisations are involved in tackling fraud within the UK
- ❑ Within government, no one organisation has overall responsibility
- ❑ Numerous departments are responsible for regulating, preventing, detecting and prosecuting fraud
- ❑ For many, countering fraud is only a small part of their overall activity

Tackling fraud – the UK approach

- ❑ Number of trends within recent years:
 - ❑ Increasing focus on alternatives to prosecution (e.g. disruption, civil penalties, etc)
 - ❑ Increasing focus on asset recovery (restraint and confiscation)
 - ❑ Increasing moves towards greater specialisation (e.g. SFO, FSA, DWP, etc)

The Crown Prosecution Service

- ❑ Majority of crimes within England and Wales are prosecuted by the Crown Prosecution Service (CPS)
- ❑ CPS is divided into 43 separate geographical 'Areas'
- ❑ Four specialist central casework divisions:
 - ❑ Organised Crime Division
 - ❑ Special Crime Division (high-profile cases)
 - ❑ Counter-Terrorism Division
 - ❑ Central Fraud Group (created in 2010)

The Central Fraud Group

What do we do?

- ❑ We prosecute all fiscal fraud cases investigated by HM Revenue and Customs (e.g. income tax, VAT & duty evasion)
- ❑ We prosecute non-fiscal fraud cases which are serious and complex (i.e. frauds with a value in excess of £1m) as well as cases involving corruption and sensitive lower level frauds
- ❑ We also prosecute arms dealing and sanction violation cases on behalf of HMRC
- ❑ We offer advice and assistance to local Complex Casework Units across the CPS

The Central Fraud Group

- ❑ Around 150 staff (1/3 lawyers, 2/3 paralegal and clerical support)
- ❑ A national service based in three geographical centres (London, York and Manchester)
- ❑ Structurally separate from those responsible for investigating our cases – police and HMRC officers – but dependant upon them referring cases to us
- ❑ Early prosecutorial involvement pre-charge

The Central Fraud Group

- ❑ Prosecutors cannot *direct* the investigation but can and do *advise* the investigators as to e.g. lines of enquiry, use of coercive powers, etc.
- ❑ Joint approach to case strategy, offences to be investigated but final decision as to who is prosecuted and for what is a matter for the prosecutor
- ❑ The decision to charge – Code for Crown Prosecutors:
 - ❑ Evidential sufficiency
 - ❑ Public interest

Prosecuting complex fraud

- ❑ Cases are evidentially complex / paper heavy
- ❑ Getting prosecutor involved early is key – vital to have input into case strategy from outset
- ❑ Require prosecutors who are robust and able to manage large quantities of material; who have knowledge of e.g. underlying tax regime, financial markets, etc.
- ❑ Need to give early consideration to financial aspects of the case
- ❑ Virtually every case requires evidence from other jurisdictions – need to consider at an early stage

Prosecuting complex fraud – tools

- ❑ Immunities from prosecution
 - ❑ Governed by statute and rarely used
- ❑ Written agreements with a co-operating defendant
 - ❑ Governed by statute and used more frequently
 - ❑ Used in relation to defendants who have admitted guilt and wish to co-operate in return for possibility of a reduced sentence
 - ❑ Can be powerful and persuasive evidence – but need to treat with caution

Prosecuting complex fraud – tools

Disclosure Notices

- ❑ Governed by statute
- ❑ Necessity of reasonable grounds for suspicion:
 - ❑ that a relevant offence has been committed,
 - ❑ that the person has relevant information,
 - ❑ that the information is likely to be of substantial value
- ❑ Notice may require the person to answer questions, provide information or produce documents
- ❑ Failure to comply without reasonable excuse is an offence

Prosecuting complex fraud – tools

- ❑ Disclosure Notices (contd.)
- ❑ Cannot be used to compel legally privileged information
- ❑ Cannot be used to compel banking documents unless the prosecutor specifically authorises this
- ❑ Statements made in response to a disclosure notice cannot be used subsequently as evidence against their maker

Prosecuting complex fraud – tools

- ❑ Plea Discussions
 - ❑ Not governed by statute – AG guidelines only
 - ❑ Restricted to cases involving serious or complex fraud
 - ❑ No plea agreement can bind the court or seek to do so
 - ❑ *“In this jurisdiction a plea agreement or bargain between the prosecution and the defence in which they agree what the sentence should be, or present what is in effect an agreed package for the court’s acquiescence, is contrary to principle.”* (LCJ, Dougall, 13/05/10)

Prosecuting complex fraud – tools

- ❑ Serious Crime Prevention Orders
 - ❑ These are relatively new orders (introduced in 2007)
 - ❑ Available in the Crown Court after a person has been convicted of a serious offence or in the High Court where there is proof a person has been involved in serious crime
 - ❑ Enables the Court to make an Order containing such prohibitions, restrictions, requirements or other terms as necessary
 - ❑ Order must be for the purpose of preventing further involvement by that person in serious crime

Prosecuting complex fraud – asset recovery

- ❑ Recovery of proceeds of crime now as important as securing the criminal conviction - specialist team of lawyers within the CPS who work with our prosecutors
- ❑ Legislation permits an accused person's assets to be frozen ('restraint order') even before the time of charge
 - ❑ Need to balance risk of dissipation against risk of alerting suspect to ongoing investigation
 - ❑ Courts have held that investigation / prosecution must be expedited whilst property is subject to restraint

Prosecuting complex fraud – asset recovery

- ❑ Upon conviction, courts can make a confiscation order designed to remove from the defendant his proceeds from crime. Court will ask three questions:
 - ❑ Has the defendant benefitted from relevant criminal conduct?
 - ❑ If he has, what is the amount of that benefit?
 - ❑ What realisable assets does he have available to meet any order?

Prosecuting complex fraud – asset recovery

- ❑ Where defendant is deemed to have a ‘criminal lifestyle’ court must make certain assumptions e.g.
 - ❑ that property held or transferred to defendant on or after date of conviction represents his benefit from crime
 - ❑ That such property is held free of any other interest
- ❑ Burden is then on defendant to disprove the assumptions

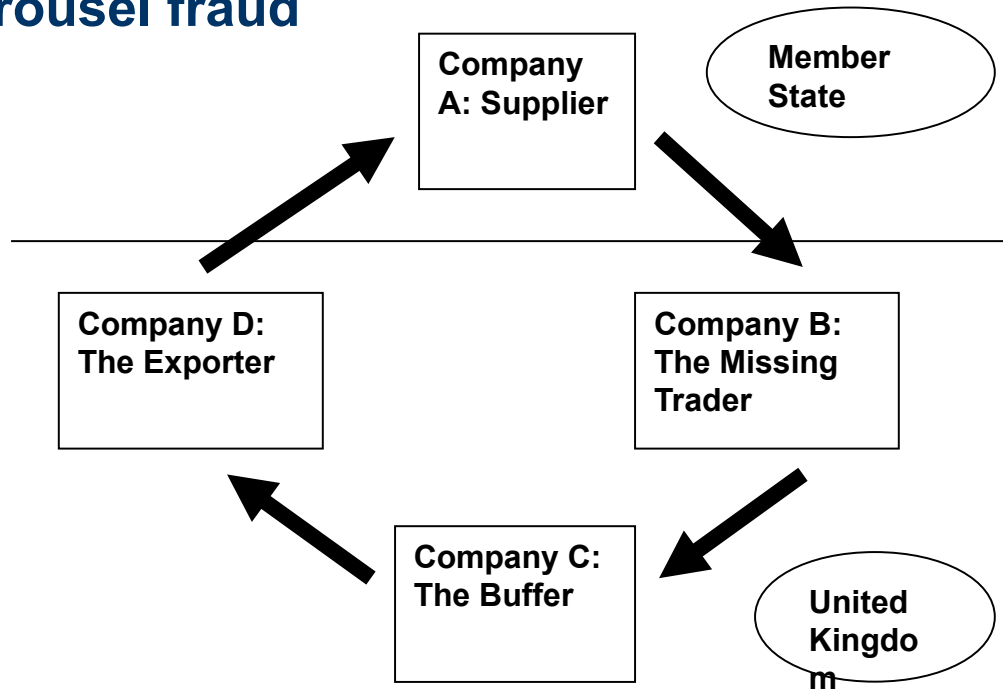
Prosecuting carousel fraud

Carousel (or missing trader) fraud:

- ❑ Represents the most systematic and organised attack on the UK tax system ever encountered
- ❑ International in scope
- ❑ Responsible for estimated losses of between £2-3bn p.a. in the UK alone
- ❑ Constantly evolving
- ❑ Controlled by organised crime: threats, kidnapping, violence and jury intimidation all feature

Carousel Fraud – how does it work?

A simple carousel fraud



Prosecuting carousel fraud – the evidence

- ❑ Evidentially, these cases are large and complex
- ❑ Example – *Op Euripus*
 - One of our largest ever MTIC cases (over £250m)
 - ¾ million documents seized
 - 28 terabytes of electronic data
 - 96,000 pages of exhibits
 - 21 Letters of Request despatched
 - 17 defendants over six trials
- ❑ MLA is a key feature of all these cases

Prosecuting carousel fraud – disclosure

- ❑ Disclosure rules in the UK require us to disclose to accused anything which might “undermine the prosecution case” or “assist the defence case”
- ❑ Rules also include a requirement to “pursue all reasonable lines of enquiry”
- ❑ Cases are defended on the basis of an ‘innocent dupe’ defence – thus, any material suggesting involvement by anyone else in the fraud is material which has to be considered for disclosure
- ❑ One case may feature 100+ separate trading companies

Prosecuting carousel fraud – disclosure

- ❑ In 2005, HMRC responded to problems with disclosure by establishing a library of materials
 - ❑ Recording any contact that an investigator had had with any of the companies featuring in our cases *and*
 - ❑ Recording any suspicion that any officer had officially recorded in respect of any of those companies
- ❑ Investigators and lawyers now required to search against this library in every case

Prosecuting carousel fraud – disclosure

Op Euripus – a case example:



Prosecuting carousel fraud – abuse of process

- ❑ Inherent power of the court to safeguard the fairness of its proceedings by staying any case which amounts to an abuse of process – either where a fair trial is not possible or where it would not be fair to try the accused (*ex p Bennett* [1994] HL)
 - ❑ Some overlap with Art 6: right to a fair trial
 - ❑ An exceptional remedy to be used sparingly

Prosecuting carousel fraud – abuse of process

- ❑ Examples of abuse arguments:
 - ❑ Deliberately targeting the ‘missing traders’ and ignoring brokers
 - ❑ Use of witnesses said to be complicit in the fraud
 - ❑ Policy of non-prosecution motivated by desire for information – allegations of a ‘corrupt’ relationship

Prosecuting carousel fraud – the criminal / civil overlap

- ❑ Many individuals subject to a criminal prosecution also involved in litigation before the VAT Tribunal as they seek to challenge HMRC's refusal to make VAT repayments
- ❑ Requires liaison with civil lawyers over issues such as:
 - ❑ Can evidence obtained as part of a criminal investigation be used in the civil case?
 - ❑ Is anything the individual says before the Tribunal admissible evidence in the criminal proceedings?
 - ❑ Does the fact that he has given evidence in prior civil proceedings give rise to an argument that any subsequent criminal case is thereby rendered unfair?

Prosecuting carousel fraud - outcomes

- ❑ To date, over 230 defendants convicted of carousel fraud related offences (incl. money laundering)
- ❑ Courts have indicated sentences of imprisonment in double figures appropriate for those who organise these frauds
 - ❑ *“Those who organise such fraudulent activity can and should now expect, in our view, sentences well into double figures after trial.”* (Court of Appeal – December 2006)
 - ❑ *Henning* – 15 years upheld on appeal (June 2007)
 - ❑ *Emmersed* – 14 defendants sentenced to over 110 years (2008)
- ❑ Over £150 million ordered to be repaid