insideinformation – fact sheet

Fraud

Information courtesy of Aziz Rahman of Rahman Ravelli Solicitors Halifax

Warren Buffet, the American investor famously said "*you can only find out whose swimming naked when the tide goes out*." By September 2008, when the Lehman Brothers bank collapsed another American, Bernie Madoff, must have been worried that he was about to be exposed by the fast receding tide. Madoff admitted in December 2008 that the asset management arm of his firm was a giant 'Ponzi fraud'. The ripple effect of that scam and the world wide credit crunch continues. Economic depression breeds greed and risk taking behaviour – by victims as well as fraudsters. There will be more frauds, there will be more victims of frauds and there will also be more people wrongly accused of fraud. My concern is that those accused of fraud still get a fair trial.

The Fraud Act 2006 came into force on 15/1/07. It's impact has been to make frauds easier to prosecute and wipe away many of the technical and academic difficulties that plagued prosecutors trying to build a case. And just as well prosecutors and police officers may say as fraud has never been so popular. The KPMG Fraud Barometer reports the highest number of cases hitting the courts for 21 years; over £630m of fraud by value in the courts in the first half of 2009 and more than £1.1bn of fraud in UK courts in 2008.

But fraud trials have long been the most expensive to prosecute – as well as defend, and now we see a huge increase in fraud. There has been, for a number of years, an enthusiasm from the Government to drive down the costs associated with long fraud trials; indeed even the need for jury trials at all in complex cases, and we now have the *Attorney General's Guidelines on Plea Discussions In Cases of Serious or Complex Fraud* (5/5/09) - a step towards US style plea bargaining. The worry is that cost-saving in an increasingly litigious environment will lead to real injustices.

Increasingly there have been attempts to move fraud from the criminal forum to the civil forum. The Americans have had quasi criminal/civil jurisdiction in place for years. I represented a British hedge fund manager who operated out of the States and was accused of fraud by the American civil authorities; United States Securities & Exchange Commission v Manterfield [2009] 1 Lloyds Rep 399 (CA). The case highlighted the different approach of the U.S. regulatory body to the civil/criminal dichotomy and showed us what the forum could like if the current trend continues.

An obvious example of the Government's attitude towards the criminal courts is the use of Civil Recovery litigation in the High Court by agencies such as the Serious Organised Crime Agency and the Serious Fraud Office. Not enough evidence to prosecute – well do away with the jury and go the High Court. I'm glad to say that we currently have a case pending in the Court of Appeal which challenges, on human rights grounds, the propriety of making serious allegations of criminality relying only on the lower civil standard of proof –look out for the case of Gale v SOCA around Easter 2010. '

'Money's too tight to mention' as Mick Hucknall said a long time ago but that only means that there's more fraud and more fraud prosecutions and increasing pressure to save money by those who know the cost of everything and the value of nothing.

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