

UPDATE

Always suspicious: implications of failing to report

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This update covers the first prosecution in Jersey against a regulated business and its Money Laundering Reporting Officer for failing to report suspicions under the Proceeds of Crime (Jersey) Law 1999.

Recent proceedings against STM Fiduciaire Limited (**STM**) and its Money Laundering Reporting Officer, Michelle Jardine, (**Jardine**) for breaches of the Proceeds of Crime (Jersey) Law 1999 (**PCL**) have resulted in an acquittal for all parties. This was the first attempt at a prosecution in Jersey for failure to report potential money laundering since the provisions requiring such reports were brought in over 15 years ago.

The proceedings are said to have arisen from a visit by the Jersey Financial Services Commission (the **JFSC**), and concerns seemingly arising over compliance with the PCL, in particular the filing of Suspicious Activity Reports (**SARs**). The visit took place in 2012, and related to failings in 2011. The JFSC apparently concluded that STM had acted swiftly to address perceived failings, and no clients were said to have been put at risk. However, a number of years later, the decision was taken to prosecute STM and Jardine and those proceedings were heard in June 2015. The proceedings included evidence being heard from the parties, but also representatives of the JFSC and the Jersey Financial Crimes Unit (**JFCU**).

Whilst there is no judgment of the Court relating to the acquittal, it is clear from available material that the findings of the JFSC visit were that Jardine as MLRO (for some of the time she was also MLCO) had failed to appropriately deal with 15 internal suspicious activity reports filed with her. Some of those internal SARs were said to have been submitted 20 months previously. The failure to process these internal SARs is said to constitute a failure to acknowledge receipt, consider the content of the reports and to file an external report where appropriate. She also allegedly failed to make proper report to the Board of STM regarding SARs.

In terms of STM itself, the allegations against the business appear to relate to a failure to properly monitor Jardine as MLRO and MLCO and ensure the requirements of the PCL were fully satisfied by the business.

The actual proceedings appear to relate to a more limited set of facts, seemingly just referencing one of the instances of a failure to report suspicions. That particular occasion related to a service provided by STM in connection with the St Kitts and Nevis passport programme. St Kitts and Nevis runs a citizenship by investment programme, and one such application that STM became involved in concerned a Ukrainian local politician, who would clearly be a Politically-Exposed Person (a **PEP**). STM carried out its usual KYC and CDD checks, and also collected money for its fee for the service. The fee is said to have been paid from a company in Belize via a Cypriot trustco, and there was no conclusive and evidenced link to the applicant. STM therefore returned the funds to sender and did not process the application.

The prosecution case was that these facts should have given rise to a SAR. Under the POCL, any person who knows or suspects (or has reasonable grounds to know or suspect) that another is engaged in money laundering or that any property constitutes or represents the proceeds of criminal conduct is obligated to report that knowledge, suspicion or reasonable grounds for the same to the JFCU. This includes cases where the business is ultimately declined, as in this case.

The prosecution case, however, was that the funds received on behalf of a PEP, with connections to a notoriously corrupt country, and with no clear connection between the application for business and the source of the funds gave rise to suspicion, and so should have been reported. In response, it was argued that a risk-based assessment had been adopted, as recommended by the JFSC, and that the information received had been adequately assessed. It was also argued that there were plausible explanations for the routing of funds, and a conclusion was ultimately reached that there was no money laundering, but only 'loose ends' to be addressed regarding the source and return of the money.

Unfortunately there is no judgment of the Royal Court as the case ended in acquittal, and so we do not have the full reasoning of the Court as to why all parties were acquitted. However, it does appear that the case argued by the prosecution that the trigger for suspicion is very low, and that PEP status was enough, was dismissed by the Court. The assessment carried out by Jardine and STM appears to have met the requirements in the view of the Court.

Whilst these facts may offer some comfort to MLROs and regulated businesses, as the apparent adoption of the risk-based approach did appear to cover Jardine and STM, it is clear that the JFSC will put forward instances of perceived non-compliance to HM Attorney General for prosecution, and charges will be brought against those concerned. Jersey's international obligations and the need to demonstrate regulatory enforcement action against those who are perceived to breach its regulatory standards are no doubt strong public interest arguments that weigh in favour of taking such action.

Whilst these proceedings were unsuccessful, that potentially makes it more likely that future similar prosecutions will arise in order for Jersey to be able to point to a successful conviction for failure to report. Whilst Jardine was successful in defending the criminal proceedings, shortly after the acquittal, Jardine was banned by the JFSC from being employed in any capacity with any registered person under the regulatory laws, without having first applied to the JFSC for consent to do so. A public statement was also issued by the JFSC in respect of STM and Jardine, highlighting the action taken by STM as a result of the investigation by the JFSC, including significant staff changes and tightening up of compliance functions and policies.

One small piece of comfort for STM and Jardine is that at least this case pre-dated the coming into force of the financial penalties regime, as this case appears to be one where a financial penalty may well have been imposed against STM and, if the rumour that the regime may extend to individuals in due course is also true, Jardine as well.

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