

MACFARLANES

DELAYS, REMORSE, REDUCTIONS AND BRIBES

FRAUD AND FINANCIAL CRIME

In this briefing we consider some of the recent financial crime developments. These include a reduction in prison sentence for insider dealing, a new whistleblower service and the first conviction under the Bribery Act 2010.

INSIDER DEALING SENTENCE REDUCED BY THE COURT OF APPEAL

In January 2011 Neil Rollins was sentenced to 27 months' imprisonment for five counts of insider dealing and four counts of money laundering. Mr Rollins had worked as a Manufacturing Director at an engineering company and over the years he had built up over 90,000 shares in the company. As with all employees, Mr Rollins was not allowed to sell any of those shares during a "close period" which occurred shortly before the publication of the annual results and when internal memos were disseminated to senior employees, which included Mr Rollins, regarding the firm's accounts and prospects.

During the close period of 2006 the internal accounts and reports made it plain that the company was experiencing financial difficulties. Upon receiving this information Mr Rollins sold a large proportion of his shares. Thereafter Mr Rollins was summarily dismissed, investigated by the FSA, charged and finally, in January 2011, convicted. In June Mr Rollins appealed against his sentence.

The Court of Appeal allowed the appeal and reduced Mr Rollins' sentence from twenty seven to 18 months. It held that the trial judge had failed to pay sufficient regard to the fact that it had taken four years to bring the case to trial during which Mr Rollins and his family were subject to acute stress and anxiety. The Court of Appeal noted that although Mr Rollins was interviewed on three occasions he was not charged until six months after his last interview. The Court of Appeal also recognised that since his conviction, Mr Rollins had demonstrated genuine remorse for his actions, that his professional reputation had been destroyed, and that the financial consequences of his offending had been devastating. However, the court rejected the arguments that Mr Rollins' sentence should be further reduced as he had not been motivated by making a profit, but rather by the fear of making a loss; that he had acted alone, and that therefore the impact of the offences on public confidence in the integrity of the markets was less than if he had acted with others; and the fact that he had not been a member of senior management.

WHO ARE YOU GOING TO CALL?

The Serious Fraud Office (SFO) has recently revealed its latest tactic in the fight against fraud and bribery in the City - a confidential whistleblower service. The SFO hopes that the confidential nature of the service will encourage more City workers with knowledge of suspected fraud or corruption to report those concerns. Those who wish to report any suspicious activity will be able to do so by telephone, a secure online portal, by email, or in writing. It is also believed that the new whistleblower service will cut the costs and time of the early stages of an investigation. The SFO has stated that it will never record or trace any calls and, where appropriate, it will give whistleblowers a unique PIN or pseudonym in order that they can continue to report.

BRIBE BRINGS CLERK SIX YEARS BEHIND BARS

After much speculation over the possible impact of the Bribery Act 2010 (the Act), the Crown Prosecution Service (CPS) has secured its first conviction under the Act against Mr Patel, an East London magistrate's court clerk. Mr Patel was arrested after he promised an individual summoned for a motoring offence that he could, for a payment of £500, "get rid" of the speeding charge by not entering it into the court's database. Unfortunately for Mr Patel the individual told the Sun newspaper about the offer, and the tabloid secretly filmed the clerk arranging the bribe. Mr Patel was subsequently prosecuted under section 2 of the Act for requesting and receiving a bribe intending to perform his functions improperly. The maximum sentence under the Act is ten years. Mr Patel, however, was sentenced to three years for bribery and six years for misconduct in public office, both sentences are to run concurrently.

Although Mr Patel admitted to the one count of bribery and misconduct in public office the prosecution believed that he had been running his scheme for some 18 months and it was estimated that he made at least £20,000 by helping 53 other offenders. It is thought that he also gave people advice regarding how to avoid being summoned to court over traffic offences. There were also suspicions that Mr Patel had been supplying drivers with blank invoices from a north London garage so that they could be used as false proof that their cars had been under repair at the time of an alleged offence.

In passing sentence, the judge told Mr Patel that his position as a court clerk had at its heart a duty to engender public confidence in it and that "a justice system in which officials are prepared to take bribes in order to allow offenders to escape the proper consequences of their offending is inherently corrupt and is one which deserves no public respect and which will attract none". Following Mr Patel's conviction, Goan Hart of the CPS said that the Act "has provided a significant weapon in the armoury of prosecutors that enables us to focus on the bribery element rather than general misconduct behaviour". The SFO had previously indicated that it would focus on the most serious offences, but the conviction of Mr Patel is a reminder that any acts of bribery irrespective of the sums involved, will be investigated, particularly if it is in the public interest to prosecute.

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