The Hiding of Wealth: The Implications for the Prevention and Control of Crime and the Protection of Economic Stability

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FINANCIAL CRIME AND MONEY LAUNDERING

In July, a London solicitor was sentenced to seven years’ imprisonment for laundering £30m, being the proceeds of drugs and other uncustomed substances which one of his clients had smuggled into the country. The judge who sentenced him observed this was the largest money laundering operation he had come across. In fact, in 1998, the operator of a bureau de change in Notting Hill Gate in west London was sentenced to 14 years in prison for laundering an even larger sum. It was the fact that the defendant was a solicitor, that the amounts were so huge and that he used the respectable front of a London solicitor’s practice for what used to be called ‘receiving’, or ‘fencing’ the proceeds of crime, that makes this case so notable.

It was not an SFO case; it was prosecuted by Customs and Excise Solicitor’s Department. The author sees a number of solicitors’ names on files that do arrive at the SFO, however; solicitors who have worked in some of the most famous and well-respected firms in the country, who have been involved, some peripherally but some centrally, in economic crime; whether as major participants in the fraud itself, or, like this defendant, as launderers of the proceeds of another’s crime.

This should not happen. Each solicitor, each professional person, with a professional code of ethics, never mind their obligation to society through the law, who involves himself, however unwillingly perhaps at first, at the behest of a criminal client brings shame on the profession and aids a highly damaging and now major source of loss to the economy.

It is not being suggested here that all solicitors, accountants, bankers and other professionals in the financial services industry are dishonest. On the contrary. Again, the evidence suggests that the overwhelming majority of such people are honest, upright professionals who are only too willing to help the SFO, the police and other authorities in their enquiries. The evidence also suggests that there are some who are not.

The Financial Action Task Force (FATF) has pursued a number of countries whose lax controls and seeming obliviousness to the dangers of laundering the proceeds of crime have made them attractive destinations for the criminals, gangsters and money launderers of the world. The FATF campaign, which names and shames the non-compliant and threatens worldwide sanctions, has paid off: the controls in almost all countries singled out for criticism have been tightened considerably. Eighteen countries or territories are named in the FATF’s 12th annual report, published in June 2001, as ‘non cooperative’. And only three countries remain whose controls do not meet international standards. There are very few places in the world now where gangsters can reckon their chances of depositing dirty money and getting away with it are high. Those states are the pariah states of the world.

Addressing them, the author would only say that they are doing themselves no favours. Where there is laxity, or even more importantly the perception that there is laxity in controls, in banking and investment supervision and regulation, money launderers and criminals will be attracted. And no regime, however benevolent, wants that sort of business. These are not the gentleman crooks of ‘Raffles’ fame; he was a creation of fiction and should remain there. The sort of criminals who make use of gaps in banking supervision, who take advantage of eyes that are shut to tax evasion, or of money emanating from drug deals, prostitution rings or the trafficking in human beings, will not hesitate to use guns, bombs and any other means at their disposal to protect themselves and their cash. Nobody wants to attract that sort of foreign visitor.

Banking channels are, of course the traditional route for laundered funds. Casinos and the more down-market betting shops are another. Other increasingly popular — and, as yet, uncontrolled methods for laundering the proceeds of crime are
through securities and commodities brokers; through offshore trusts; buying real estate; through bureaux de change and so-called ‘underground’ banking; and buying expensive pieces of jewellery and fine art and anything else of high resale value.

The latest EU Money Laundering Directive (No. 2) extends coverage of money laundering controls to:

- accountants and auditors
- real estate agents
- legal advisers
- precious metals dealers
- transporters of funds
- casino operators.

It also intends to extend coverage to investment firms, bureaux de change and cheque cashers.

In the 14 years the Serious Fraud Office has been in existence, investigating and prosecuting major fraud, there have been many examples of money laundering. That experience has also confirmed that efficient money laundering facilities are required by professional and organised criminals just as much as by the opportunist who knows a good thing when it comes his way and is content to take a secret and dishonest advantage.

From experience of money laundering cases at the SFO, it is possible to draw some general points:

- money laundering is prevalent where there are corrupt, negligent or unaccountable governments;
- the way money is laundered is the same whether the proceeds of the crime arise from fraud, political corruption, drug dealing or terrorism;
- countries with favourable tax regimes will attract dirty money;
- money laundering will take place where financial institutions which receive dirty money pay only lip service to the law, regulations or good practice;
- money laundering can only take place where there are sophisticated professionals, such as lawyers, accountants and bankers, who are willing to be actively engaged in criminal acts or simply shut their eyes to the truth.

The purpose of organised crime is to make a profit by illegal activity — it does not matter whether it is through fraud or trafficking in drugs, arms or immigrants, or other crimes. The profits which can be made are huge and cannot conveniently be kept in cash. If the criminal wants to use his profit, for example to buy a house or a car, he has to introduce it into the legitimate banking system. All too often he cannot do that without the help of other criminals who have, all too frequently, qualifications as lawyers, accountants or bankers.

There should be no illusions. The money launderer who helps criminals enjoy the fruits of their crimes is just as much a criminal himself. It is often said that there would be no thieves without receivers of stolen goods and that is why the penalty for handling stolen goods is 14 years; the penalty for theft is seven years. If the original offence happens to be theft or obtaining property by deception then the money launderer very probably commits the offence of dishonestly assisting in the retention or disposal of stolen goods under the Theft Act 1968 as well as offences of money laundering per se, for which the penalty is 14 years on indictment.

Money laundering itself can take many forms: the process can cover all those ways in which the profits of crime are controlled and converted, stored, transported or transferred, managed, obscured, anonymised, invested and enjoyed. Running through all these processes are three repeated and overlapping actions: conversion, movement and concealment.

In the initial or placement stage of money laundering, the launderer introduces his illegal profits into the financial system. This can be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders etc) that are then collected and deposited into accounts at another location — a solicitor’s client account, for example.

After the funds have entered the financial system, the second — or layering — stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channelled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions mentioned above that do not cooperate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

Having successfully processed his criminal profits through the first two phases of the money laundering
process, the launderer then moves them to the third stage — integration — in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets or business ventures.

Assisting criminals has a corrupting and corrosive effect on the professionals who associate with them. Once you have helped a criminal launder money you are in his or her sway. It is difficult to refuse the next request for help. There is the risk of blackmail — if not by the offender then by others with whom he conspires. Laundering the proceeds of crime corrupts individuals, organisations and governments. The flight of money can impoverish nations and it allows evil people to exercise power. Moreover, there is quite often a chain of connected offences, of which money laundering forms only one link: X commits armed robbery at a bank and steals £100,000 which is used to buy lorries to bring in illicit arms for the IRA, or illegal immigrants, or drugs; the proceeds of which go to fund the purchase of companies which are then milked of their capital, which is then laundered through bank accounts in numerous overseas jurisdictions . . . and so it goes on. Perhaps most damaging of all is the threat to the reputation of the country where this activity takes place as an honest, trustworthy place to do business. Without that reputation the economy of the country would be at risk.

Too often people who never for one moment thought they would become involved in crime are sucked into the conspiracy and become more or less willing participants in the execution of that conspiracy. For example, a solicitor may allow his client account to be used to receive deposits for investments. The lure to the investor is that the money is safe because a solicitor is regarded as trustworthy and in any event the Law Society will compensate should there be any theft. Or perhaps the solicitor’s indemnity insurance policy will be used to guarantee the safety of the investment.

The Serious Fraud Office only deals with about 80 to 90 cases at any one time, which represent the tip of the fraud iceberg, although the cases dealt with tend to be the largest and certainly the most complex. Often cases are seen where good deals are being done and directors and advisers want a personal profit. Very often they go to considerable lengths to disguise the provenance of the money that comes into their accounts and, in fairness, it would not always be particularly easy to spot as an obvious laundering of money. There is evidence that laundering is becoming more and more sophisticated. Last, there are those cases which are frauds from start to finish, committed by professional organised criminals. These are the people who rely on being able to wash their money through the banking and financial system.

By way of example, there are investments promising a return of 30 per cent per month linked to or enabled by ‘prime bank guarantees’ — something so secret that only very few people are allowed to know anything about them but which make huge profits for the banks involved. The money is quite safe — it is in a solicitor’s client account. Its return is guaranteed and it should make a vast profit.

Or, an actual case dealt with recently together with the Thames Valley Fraud Squad. Two Russian couples in the UK arranged to print a glossy, impressive-looking brochure setting up details of a conference organised by the Investeco Corporation which was ‘a founder member of the Roosevelt Foundation; a charity sponsoring courses and conferences to be held in Florida’. The brochure, printed in Russian, was mailed to thousands of businesses in the former Soviet Union. The cost of the conference was attractively set at $2,000, which included accommodation and travel. No conference was organised, there was no Roosevelt Foundation — certainly not one linked to Investeco — and the brochure was completely misleading about the qualifications of the people who would take part in the course as lecturers and course leaders.

The defendants managed to obtain US$2.4m paid into bank accounts in this country and in Switzerland. Apart from the expenses of printing and mailing the brochures plus hiring accommodation addresses in the USA, this was all profit. When caught, the defendants were in the process of laundering the proceeds of the fraud via accounts in Guernsey to accounts in Andorra where they proposed to live. In fact that was stopped: orders obtained by the Swiss freezing money out there and, apart from sentences of three years’ imprisonment, confiscation orders were made for what was left in the total sum of about £1.1m.

This was quite a significant case involving a fraud on a new market. It also demonstrated the need for close cooperation between law enforcement agencies in several jurisdictions — the UK, Russia, America, Switzerland — and the advantage of s. 93A Criminal
Justice Act 1998 which makes it an offence to assist in the retention of the benefit of criminal conduct — remember the victims were in Russia and no one in England lost a penny piece.

In a case which ended after a six-month trial at Bristol Crown Court, three men, two Germans and an Italian, were convicted of settling up a sophisticated variant on an advance fee fraud. Setting up the ‘Allgemeine Handels und Effecenbank AG’ in the premises of an old TSB bank in the centre of Torquay, they persuaded a number of German and Austrian architects, builders and property developers to apply for huge loans at advantageous rates of interest, with, of course, a fee payable upfront for the facility. They would have netted some £7m but their activities were nipped in the bud by Devon and Cornwall police and the SFO and all but a few hundred thousand pounds was recovered for the hapless investors, all the money having been laundered through accounts in some 12 jurisdictions.

Investigating major fraud and the money laundering that is concomitant with it is, of course, difficult, time consuming and frustrating. The SFO works closely with the police and has good liaison with the regulators, especially the new Financial Services Authority. The SFO works closely with authorities abroad. It has special powers under s. 2 of the Criminal Justice Act 1987 for obtaining documents both from suspects and others and for requiring individuals to furnish information or otherwise answer questions.

Despite these powers, obtaining sufficient evidence to justify a prosecution, perhaps preceded by the extradition of some, at least, of the offenders, can be very difficult and is not always possible to achieve. One of the problems faced in this country as investigators and prosecutors is that generally jurisdiction to try criminal offences is not taken, unless the offences have been committed in England and Wales.

However, the acts which constitute a fraud may be committed in several jurisdictions. For example, you might advertise some form of investment scheme in Australia. You might advertise it on the Internet promising high rates of return. The investment is, perhaps, to be sent to a lawyer in England: the money then paid to Jersey and then on to an Anstalt in Liechtenstein. The beneficiary and advertiser might never come into any of those countries but sit, say, in Mexico. Where does the offence take place? Where is the jurisdiction to try it? In some cases, there may be help in the legislation that has recently come into force.

Part 1 of the 1993 Criminal Justice Act applies in the cases of certain offences, including conspiracy to defraud, where most of the transactions in question take place outside the jurisdiction. Such cases can be tried in England and Wales, but there must be proof of a ‘significant event’ within the jurisdiction. Even if the UK has jurisdiction as a matter of strict law, much of the evidence and the real harm may in fact be found overseas and therefore, in practice, it makes better sense to try the matter there. It is partly because of this that the SFO fosters good relations with its overseas counterparts and, in some cases, is able to furnish them with the evidence to try a case within their jurisdiction where much of the action took place in the UK and, conversely, it is able to bring proceedings here using evidence furnished through mutual legal or judicial cooperation channels.

There are other hurdles to overcome, especially when the investigation is one of money laundering, the proceeds of crime committed in another or possibly several jurisdictions where the laws differ from those in the UK. In money laundering, it must be proved that the funds in question are indeed the proceeds of crime. This is not as easy as it sounds. Suppose that the funds are the proceeds of breach of exchange controls that are unique to the state from which the funds have been taken, not replicated in domestic law over here or maybe anywhere else; or, conversely, they are the proceeds of what would have been an offence over here, but no offence in the country from where the funds have been taken; or the offender has fled from an oppressive regime, taking his worldly possessions with him, strictly in breach of his home state’s tyrannical laws? Are these truly cases of money laundering? Hard cases make bad law, but the problem for the prosecutor remains: how do you prove the predicate offence, without which you cannot necessarily prove you are dealing with the proceeds of crime at all? It is worth noting that the government here has recommended that the offence under s. 18 Criminal Justice Act 1993 of failing to disclose suspicions of money laundering should be extended to all offences under the Criminal Justice Act 1998 and not just drugs and terrorism.

Last, the most practical question of all — if we cannot answer it, we have little chance of changing attitudes that lead to complacency about money laundering: How do you make money laundering an
unattractive proposition? Is it sufficient simply to introduce legislation that forbids it? The penalties as mentioned at the beginning of this paper are already very severe and money launderers are increasingly charged and convicted. Yet the number of offences continues to rise alarmingly and money laundering continues to attract people into its dangerous web.

Economies with growing or developing financial centres but inadequate controls are particularly vulnerable, as established financial centre countries implement comprehensive anti-money laundering regimes. Some might argue that developing economies cannot afford to be too selective about the sources of capital they attract. But postponing action is dangerous. The more it is deferred, the more entrenched organised crime can become. As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country’s commercial and financial sectors are perceived to be subject to the control and influence of organised crime. Bad money, as the saying goes, drives out good. If you want to attract legitimate business, beware of the temptation to accept funds from more dubious sources.

The pernicious nature of money laundering needs to be explained to members of the public. The public is rightly concerned about criminality that appears to touch them directly — burglary, vandalism and street violence. They should be equally concerned about the corruption of their society and the world at large caused by money laundering. Money laundering is intimately connected with, and indeed provides much of the motivation for, the underlying crimes that do arouse public indignation and fear.

This is not only an academic subject or one for annual conferences — it is a debate that needs to be taken to the heart of our communities the world over. The respectability of money laundering should be broken once and for all.

Cultures are needed which reject money laundering and regard it as unacceptable to accept money from dubious sources. Professionals must be prepared to look long and hard at dubious transactions before accepting the money — no matter how attractive the business looks on the surface. To help criminals must be regarded as unacceptable and those who are known to facilitate it should become pariahs within the financial services sector. They should know that they will be reported to the authorities by their peers.

Perhaps what has been said here may serve to alert people to some seemingly obvious confidence tricks which have taken others in. It is essential to be more aware and alert in order to avoid the trickster, con-man and thief. Part of the stock in trade of the fraudster, and a very important part of the total make-up of the man (or woman) who seeks to inveigle people into parting with their money, is charm. The more likeable, personable and attractive the rogue, the more likely is he to persuade people to trust him. It is a well-known fact that people wearing striped jerseys with a balaclava over their head and a bag marked ‘Swag’ over their shoulder do not inspire confidence.

These are the words of Wednesday Addams, that wise daughter of Morticia and Gomez Addams, who was going to a fancy dress party dressed in her everyday clothes.

‘Who are you going as, Wednesday?’ asks her mother.

‘I’m going as a serial killer,’ she replies. ‘They look just like everyone else.’

**Reference**

(1) Nauru, the Philippines and Russia.

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