

The Rise and Rise of Financial Fraud

Rob Wynn Jones and **Benedict Hamilton** both working on the Joint Civil Recovery Working Group: a third way to combat fraud

Financial Fraud is prolific. There have been more than one million incidents where people lost money as a result of financial fraud recorded between January and June 2016, according to figures released by Financial Fraud Action UK (FFA UK) on September 20. This represents a 53% increase on the same period last year, and equates to one incident every 15 seconds in the UK. It is therefore unsurprising that the Police are unable to recover a significant fraction of the monies stolen – let alone all of them. And, as FFA UK's figures show, this kind of crime is showing no sign of slowing down.

An Alternative Solution

Earlier this year, it was announced that law firm Mishcon de Reya and global investigations and risk consulting firm, Kroll – amongst others – were to in commence a civil/criminal information sharing working group. This is a new two-year initiative being piloted by the City of London Police which will see law enforcement working together with the private sector to identify, seize and recover assets from criminals under normal civil law remedies rather than criminal law. Superintendent Maria Woodall and DCI David Manley will lead the pilot for the City of London Police and others contributing to the pilot include the SFO, and the CPS.

It is envisaged that this type of partnership will enhance existing proceeds of crime recovery mechanisms and procedures rather than replace them. Cash in UK banks, cars, and homes held in defendants own names are routinely seized under current arrangements, but many assets that are held abroad, or held covertly, currently escape recovery due to a combination of a lack of resources and a lack of expertise. This is where the private sector will show its value – increasing recoveries for victims and increasing the impact on the criminals, extending the reach of law enforcement. Civil recoveries are typically quicker and more efficient at recovering assets from abroad and law enforcement typically does not have the same level of electronic evidence and accountancy support that civil firms like Kroll can bring to bear.

Civil remedies are already of course available and utilised every day in the High Court and other courts around



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the globe. The new and creative part – developed by City of London Police and the Home Office – is the sharing of information between the police and organisations like Mishcon de Reya and Kroll. This enables the police to introduce groups of victims of the same perpetrator(s) to the possibility of forming a joint instruction that considers the civil route – in addition to the criminal route – under a joint criminal and civil steering group. In doing so, it's possible for victims of crime to recover their losses from the assets of fraudsters in circumstances where they otherwise might not have been able to.

Identifying Suitable Cases

City of London police are currently consulting as to how the private sector firms would be given the opportunity to make their propositions to the victim groups. One possibility would be for jobs to be offered for tender to a pre-qualified panel, depending on the size of the potential recoveries. However, in many of these cases, it is hard for the commercial viability of the proposition to be assessed without some initial asset

investigation. For example, in one of the cases already considered by the pilot group, it took some preliminary investigations by Kroll to identify that there was a property in Cyprus, wholly owned by the defendant, worth over 750,000 euros, when the amounts stolen did not exceed 500,000 euros. It is preliminary investigations such as this that might make such cases financially viable. Perhaps a better way would be to organise a scheme similar to how companies are selected to provide motorway breakdown assistance, ie, a taxi rank style rota of pre-qualified companies, one legal, one investigative, so that the initial scoping work on hidden assets can be done.

A number of cases will be identified by the City of London Police as ones that may be suitable for a civil fraud and recovery proceedings. Currently all members of the pilot scheme are offered the chance to contribute. Clearly they need to assess the legal and financial viability of each case, taking into account liability, quantum and assets against which to recover. The deep experience of firms like Kroll and Mishcon de Reya in recovering assets will show its value here. If the claim is financially and legally viable, the panel will prepare the case to be offered to the victims and use the police evidence for recoveries.

Funding of the Proceedings

There will generally be multiple victims of the same type of fraud by the same fraudulent gang. On many (or most) occasions, the value of the loss to individual victims will mean that it would not be financially viable to for each (say) £10,000–£50,000 fraud to be pursued in the civil context – or for that matter in the criminal context depending of the complexity of the fraud. However, if victims wish to pursue the civil route, multiple victims of the same fraud could fund the claim as multiple claimants in order to reduce costs. For example, 10 victims who have an average of £20,000 of loss means there is a £2m claim against the same crime gang which, with recoverable assets being identified in the initial investigation by Kroll and Mishcon, this would become a very financially viable matter. Of course, if the claimants “win”, they will almost always also obtain a costs order against the defendants – and again such a costs order could be applied against the fraudster’s assets. It is also likely to be awarded on an indemnity basis, so a very large proportion of the costs would be recoverable.

In the event that victims cannot afford to fund the proceedings (even with the spread of costs over multiple claimants), third party litigation funders have shown interest in becoming involved. This does mean, however, that the funders would take around 20–30% of the recovered damages as *per* their standard commercial rate. The alternative to the funders’ involvement is that the victims would have no criminal case and no criminal asset recovery at all – something which is currently happening regularly

given the sheer volume of fraud being perpetrated.

Remedies and Enforcement

Kroll and Mishcon have worked for many years in successfully prosecuting many multi-jurisdictional civil fraud and injunctive matters.

In these matters, we work together to obtain third party disclosure orders, Search Orders and Freezing Orders in the UK and similar types of orders abroad. It is often the case that assets are overseas. The police have conceded that the likes of Kroll and Mishcon de Reya, as experts in this area, are geared to running these types of cases in a way that they are not.

Third party disclosure orders are used to investigate suspects and identify assets here and abroad. Depending on what they reveal, they may lead to enough information to obtain a Search Order and Freezing Order, or may require further information from banks, email providers or internet service providers, for example. These orders are used to identify the wrong doers and their networks. From the results, Kroll can undertake further investigations and feed the results back to the law firms involved, which can use the evidence to support the injunction applications.

A Search Order is essentially a search warrant in a civil jurisdiction, permitting access to the fraudsters’ properties to search for relevant documents and (vitaly) an “imaging order” is also generally obtained and executed, which, using the Kroll’s computer forensics experts, captures a digital image of all computers, servers, clouds, emails, phones, tablets and so on for each of the defendants. The order is obtained without notice to the fraudsters and can be executed at multiple sites in multiple jurisdictions.

A Freezing Order is used to freeze and identify the assets of the fraudsters and it can be obtained here and abroad. Notably, this order requires the defendants to provide worldwide disclosure of their assets. If the Freezing Order or Search Order is breached, the defendants will be in contempt and can be fined and/or imprisoned – something which has happened to numerous defendants.

Many cases are likely to settle early once a Search Order and/or Freezing Order is obtained because the key documents have been captured and identified and the freezing of the assets has taken place. Kroll’s further investigation at the outset means that further wrongdoers can be identified and more assets recovered. Through this civil route, the process can be rapid, giving victims the best chance of recovering their losses.

Authors details

Rob Wynn Jones, Partner, Mishcon and
Benedict Hamilton, MD of Investigations and Disputes at Kroll
www.mishcon.com
<http://www.kroll.com/en-us>