



EDITORIAL

Welcome to the December 2009 newsletter. We regularly update our website with news and useful material – visit www.guildhallchambers.co.uk.

The South West Illegal Money Lending Team continues to increase its presence on Circuit. Sue Cavender recently appeared as an advocate in the first prosecution brought by the IMLT. Over the page she gives an insight into their workings and some legal pointers.

Crime Team news:

1. Recognition for the Guildhall Crime Team - "*Guildhall Chambers is home to many outstanding barristers*" – Chambers and Partners 2010, Crime.
2. Recognition for our clerking team led by Principal Crime Clerk Lucy Northeast – "*its clerking and administration is second to none*" – Chambers and Partners 2010, Crime.
3. 13 team members have retained their positions as Leading Silks (all 4 silks) and Leading Juniors (9) with Legal 500 and Chambers and Partners 2010. James Haskell debuts

this year as an "*up and coming*" junior taking the total to 14 ranked team members.

4. The Crime Team congratulates Sam Jones on becoming a full tenant after completing a successful pupillage with Christopher Quinlan.
5. The Crime Team congratulates Christopher Quinlan on his appointment as a Recorder of the Crown Court. For a number of years Christopher has acted in a judicial capacity for national and international professional sporting organisations in addition to his successful practice as an advocate in this field.
6. The Crime Team congratulates Euan Ambrose on his appointment to the Circuit Bench – after 16 years in chambers. HHJ Ambrose will be sitting in crime at the Swindon Combined Court Centre.

James Bennett



IN THIS ISSUE

- 1 Editorial
- 1 First plea agreement
- 2 First Bristol terrorism trial
- 2 Illegal money lending: A crack-down in the South West

First plea agreement



On 25 September 2009, Peter Blair QC was involved in the first ever serious fraud plea agreement under the recent Attorney General's Guidelines

A negotiated deal between the Serious Fraud Office and Mabey & Johnson Limited was approved at Southwark Crown Court by the Recorder of Westminster, HHJ Geoffrey Rivlin QC.

This marked the first completed case of a long and complex inquiry into UK companies breaching the Iraq 'Oil for Food' sanctions.

The Court was crowded with representatives of the business press, news journalists, defence fraud solicitors and representatives of international governments as they watched how this new procedure operated with a view to anticipated cases in the pipeline.

The company was fined £2,000,000 for breaching the sanctions and agreed to making reparations of almost \$1,000,000 to the United Nations Development Fund for Iraq, as well as the setting up of a monitoring auditor.

Peter Blair QC, who leads another silk from a set of chambers in London, continues to be involved in advising the SFO with this investigation.

Peter Blair QC

Find Attorney General's Guidelines at www.attorneygeneral.gov.uk/Publications

First Bristol terrorism trial



The first terrorist trial to be held in Bristol Crown Court was heard before Mr Justice Butterfield in September this year. Richard Smith QC and Rosaleen Collins represented 18 year-old Hashi Omer, a student who had been charged in connection with the massive investigation into the Westbury-on-Trym bomber.

Prosecuted by Senior Treasury Counsel – Mark Ellison QC leading Zoe Johnson - the Counter Terrorism department were keen to capitalise on their success at the Ibrahim trial in Winchester. The evidence followed three days of extensive legal argument, based upon breaches of the Police and Criminal Evidence Act 1984, and the Human Rights Act 2000.

The enormous amount of prosecution material was economically presented to the jury in the form of E-evidence and a time-line; merging hundreds of hours of telephonic, internet and CCTV evidence. The final result was slick

and professional, but failed to capture the human element in this case.

The defence had no such technology in their armoury, but a passionate closing speech from Richard Smith QC was the perfect antidote to the clinical approach of the prosecution. Mr Omer was unanimously acquitted.

Richard Smith QC & Rosaleen Collins

See <http://news.bbc.co.uk/1/hi/england/bristol/8244259.stm> for more.

ILLEGAL MONEY LENDING

A crack-down in the South West



The Government recently introduced a new initiative against illegal money lending creating a number of Illegal Money Lending Teams (IMLT). The South West IMLT - a 10 strong team from within Bristol City Council operate from two bases in Plymouth and Bristol. Their operational boundaries cover most of the Western Circuit.

The South West IMLT has not shied away from publicity. They boast a 24 hour helpline for victims, the use of undercover investigators, and work alongside police and immigration officers to bring to justice 'loan sharks'. They have been profiled by the BBC, Bristol Evening Post, Gloucestershire Echo and the Plymouth Herald amongst others (see their websites). There have been similar exercises throughout the country. Their raids, arrests, seizures and prosecutions also gain wide publicity.

There are a number of examples of the South West IMLT making significant arrests and seizures in the South West. They clearly view this proactive approach a useful tool regardless of whether any prosecution follows, sometimes simply relying on the Proceeds of Crime Act 2002 to seize cash and assets. South West lawyers who appear on the police station duty roster are likely to come into contact with the South West IMLT more and more.

However, they only brought their first prosecution in June 2009 at Bristol Crown Court. A second prosecution followed in November 2009 at Plymouth Crown Court. The number of such prosecutions will almost certainly increase as the Government has invested, and continues to invest, more than £6.4 million since the creation of these new teams. All lawyers, not just those who defend frauds/dishonesty offences, can expect to see more prosecutions of this type due to the associated and often more serious offending that relates to it.

It is clear from the investigations to date that 'loan sharks' are involved in other major crimes – drug offences, violence, running brothels amongst others. The new IMLTs' creator, the Department for Business Innovation and Skills, notes on its website that IMLTs have identified almost 600 illegal lenders, have started proceedings against 90 individuals and shut down loan books of more than £7 million. Using the Proceeds of Crime Act 2002 the teams have seized cash and assets worth £1.7 million. The longest prison sentence to date is 6 years 9 months for a loan shark who was also charged with kidnapping, wounding, blackmail and counterfeiting.

The two prosecutions brought by the South West IMLT to date are as follows:

In June 2009, Ian Jenkins pleaded guilty to a single offence of money-lending outside the Consumer Credit Act. At Bristol Crown Court HHJ Lambert sentenced Jenkins to an 8 month custodial sentence. Ian Jenkins, aged 43, who had 52 previous convictions including shoplifting and drug offences, saw himself as providing helpful banking services for the down-and-outs and junkies of Gloucester, whilst charging a hefty 30% interest rate. He operated a fairly simple system. He took as security the post office cards and pin numbers of those who wished to borrow money from him, keeping the pin numbers on a post it note stuck to the back of each bank card. He kept record books detailing the amounts lent and the amount that would need to

be repaid, and would take money out from the Post Office account, handing over some and keeping the rest as his 'loan fee'.

The second prosecution was brought in November 2009. Paul Thomas, aged 49, pleaded guilty to six offences of illegal money-lending, in addition to benefit fraud. Thomas "preyed" on members of the Thai community lending between £500 and £5000 before charging "exorbitant interest rates". Thomas is awaiting sentence at Plymouth Crown Court.

The power to prosecute – a legal minefield

As with many new initiatives there are pit-falls. The prosecutions are brought under section 39(1) of the Consumer Credit Act 1974, which forbids lending without a credit licence. On indictment, the maximum sentence is two years imprisonment. Because the prosecutions cross local authority boundaries it is necessary for the authority which delegates the power to prosecute to do so correctly; a legal mine-field even for experienced local authority lawyers. Such delegation is permitted by the Local Government Acts of 1972 and 2000, but the arrangements set out in those Acts and the Regulations that flow from them are convoluted.

In addition to delegation of powers, the power to prosecute outside an Authority's area is also granted by section 222 Local Government Act 2000. This enables any Authority to take part in legal proceedings, including instigating proceedings, if it is 'expedient for the promotion or protection of the interests of the inhabitants of their area'.

The obvious question is – when is a prosecution expedient? This has been considered in two Court of Appeal cases; *R v Jarrett and Steward* (unreported 30th January 1997) when Rose LJ said that 'In our judgement there is no warrant for limiting in any way the words [of section 222] which on their face are extremely wide'.

This was extended in *R v Richards* [1997 Crim LR 598] where the defence tried to assert that section 222 must be specifically relied upon to come

into effect. The Court ruled that 'it was not necessary to produce a written record to show that the relevant official had specifically considered that, in accordance with section 222 it was expedient to prosecute for the promotion or protection of the inhabitants of the Council's area that could be inferred'.

Most recently the wide application of section 222 and the authority to prosecute out of area has been confirmed in the case of *R (on the application of Sharyn Donnachie) v Cardiff Magistrates Court & Cardiff City Council* [2009] EWHC 489 Admin. This concerned a prosecution brought by the Cardiff City Council against a cab firm which had sold cars with false odometer readings at auctions in Newport and Gloucester. The Court decided that, given the very wide interpretation of s.222 set out in the above cases, that the local authority may prosecute any legal proceedings as long as the authority considers it expedient for the promotion or protection of the inhabitants of the area. In the Donnachie case the precise location of the 'clocking' of the cars was irrelevant, provided it was in England or Wales.

Quite apart from the technical question of authority to prosecute there are also the more prosaic matters of evidence gathering. Often those in the clutches of the loan sharks are unwilling to give evidence, even if no violence has been used. There can be understandable reluctance to actively assist the authorities in prosecuting someone who was, on the face of it, 'helping out', even when potentially vast sums are being charged in interest.

The project is a 'key part of the Government's financial inclusion agenda, one of the aims of which is to help people gain access to affordable credit.' Whatever the early problems the Government and the new IMLTs are clearly committed to the task.

Sue Cavender

Sue Cavender appeared in the first prosecution brought by the South West IMLT as detailed in this note. She is a criminal barrister experienced in prosecutions brought by teams like the IMLT acting under the Local Authority umbrella.