BLAMELESS STEEL?

A spate of cases involving allegations of money laundering and steel trading have brought the legal spotlight onto scrap metal dealers. Rahman Ravelli has successfully defended a number of clients in such cases. In this article, Aziz Rahman considers the challenges that such cases pose to a defence team.

There is the general assumption that when times are tight people become a little more desperate. For many, they have to tighten their belts, make a few economies and forgo a few of the nicer things in life because they cost that little bit too much. When the money coming in isn’t enough to cover the outgoings, action has to be taken to rebalance the situation. It is the same in business as it is with the family finances.

That seems to have been the thinking behind a number of operations that saw the authorities take an especially close look at scrap metal yards in South Yorkshire. The idea that Sheffield, known for years as Steel City, may be suffering hard times was the prompt for a number of agencies to examine the business dealings of a number of metal dealers in and around the city. They clearly believed that tough economic times may have pushed such dealers into illegal activity.

As a result, the authorities started looking for evidence of everything from the receiving of stolen copper through to the mis-selling of what were claimed to be high-grade metals and, most seriously, the use of the businesses for money laundering.

Either of the first two allegations would be devastating for any metal dealer looking to stay afloat in difficult financial times. Gaining a reputation for receiving stolen goods can only invite trouble. Being accused of selling goods that are not what you claim they are can be disastrous if you are looking to keep trading. But the money laundering allegation is in a different league to the other two. And whatever your line of business it could be enough to consign your company to the scrapheap.

In the cases we handled, none of our clients ended up being convicted. As I shall explain, there are a number of reasons for this; most notably our ability to mount a strong defence case from the very start. But the serious nature of money laundering allegations makes it imperative that anyone facing them has to fully understand the gravity of the situation – and know who they can turn to for the right legal representation.

As its name implies, money laundering is the cleaning of money – hiding its origins so no one can trace it back to criminal activity. Money laundering can be relatively simple or can involve the use of intricate, complicated arrangements that use any number of individuals, companies and banking arrangements in a number of countries. The laundering can be either self-laundering – where a person launders their own criminal proceeds – or where someone launders somebody else’s money for them. The Proceeds of Crime Act 2002 (POCA) specifies three offences of money laundering. Each is punishable by up to 14 years’ imprisonment. Section 327 of POCA makes it an offence to conceal, disguise, convert or transfer criminal property or remove it from the jurisdiction – the section most relevant to self-laundering cases. Section 328 makes it an offence to enter into (or become concerned in an arrangement to) facilitate the acquisition, retention, use or...
control of property by or on behalf of another person, knowing or suspecting that the property is criminal property. This is where someone launders another person’s money. Under S.329, it is an offence to acquire, use or have possession of criminal property.

Under POCA, a person can make an “authorised disclosure” to the authorities, explaining what they know about the origins of money they currently possess. This gives banks and other institutions an opportunity to alert the authorities, thus protecting themselves from prosecution. Such a legal opportunity, however, has to be seen as a responsibility rather than simply a chance to escape prosecution. People in such a situation have to raise any suspicions they may have about the person’s assets that they are handling. Not doing this can make them liable to prosecution. In such cases – and as with some of the steel allegations we were involved in – prosecutors are looking to construct a case that proves beyond reasonable doubt that the person they are accusing of money laundering knew or suspected that what they were handling were the proceeds of crime.

This can often mean that the prosecution puts together legal argument and evidence that can initially look to be very persuasive. They will often tell anyone they are looking to charge with money laundering that they have all the evidence and information they need and that their case is a strong one. It is a tactic that may well work for them on occasions. But if the person charged – or about to be charged – appoints the right defence lawyer they can soon find that the prosecution’s supposed watertight case may be leakier than they thought. For example, prosecutors are often relying on large amounts of circumstantial evidence. Taken as a whole, this evidence can look convincing. But the shrewd defence solicitor can question it, discredit it or even challenge its use before the case goes to trial.

The aim of the defence solicitor is to prove that their clients did not or could not know or suspect that the assets they were handling had criminal origins. Prosecutors will not succeed merely by being able to show that the defendant was uneasy about the origin of the assets they were handling and a jury is not allowed to infer things from, or speculate on, circumstantial evidence. With this in mind, any defence team faced with such a case has to make it their number one priority to be able to challenge and discredit anything implied by the prosecution. They must do this while also presenting a robust, pro-active case that sees the defence making the running rather than simply trying to adapt to the prosecution’s approach.

Any defence case has to address the issue of whether the assets were the direct or indirect proceeds of criminal activity and whether the defendant knew or suspected this. This can be where the perceptive use of experts can come into play. Auditors, administrators or forensic accountants can be used to explain to the court, with some authority, the legitimate reasons why the defendant had a cash flow or pattern of business that the authorities deemed to be suspicious. Such witnesses have the expertise and experience often necessary to help unpick and dismiss prosecution claims in court. Before then, the perceptive defence team will be making sure it gains full disclosure of all relevant information. It is one way to make prosecution claims appear more speculative than factual, which is vital when looking to cast doubt on a prosecution case.

In our steel cases, we challenged the evidence, scrutinised every argument and assumption the prosecution were making and were able to see the allegations dismissed. It is an approach that can go a long way towards showing that the prosecution does not have a cast iron case.
The headlines almost wrote themselves. It was a story where the forces of law and order were dealing a swift blow in the name of justice and, in particular, the many people who had fallen victim to boiler room fraud.

“110 held as police crack down on shares scam.” “Boiler room fraud smashed in police raids.” “Fraud police smash boiler room ring in raids.” “International police operation leads to arrest of 110 boiler room fraudsters.”

The stories all took the same line. Police arrested 110 people in London, Spain, the USA and Serbia. Those arrested were alleged to have been involved in selling bogus shares in carbon credits, gold, energy, environmental projects, wine and land. It has been calculated that their victims, of which there are 850 in the UK, have lost a total of £15M to such fraud; with amounts lost varying from £2,000 to £500,000. As part of the operation, police have already restrained £1.5M that is in British bank accounts.

It was a news story that all the media seemed to cover. The financial figures are large, which always helps gain newspaper coverage. Accounts of the lavish lifestyle habits of those arrested and occasional references to the new Leonardo DiCaprio film “The Wolf of Wall Street”, which is based on boiler room fraud, gave the story a gloss that is perhaps a little misleading. It was also interesting to note that in some reports (as in one of the headlines above) those arrested are already being treated as guilty. The term fraudster is being used to describe them, even though none of the 110 has been found guilty of anything or even entered a guilty plea. Charges are likely to follow but few of the news reports made reference to the fact that those arrested were not yet guilty of anything. And that will be where the challenge now lies for those agencies that were involved in coordinating and carrying out the raids.

The operation was described as a ground-breaking partnership between UK and Spanish law enforcement agencies. It also, quite fairly, was described as a milestone for the new National Crime Agency (NCA), which

BOILING POINT

A police operation spanning four countries and two continents has led to more than a hundred people being arrested due to alleged involvement in boiler room fraud. The scale and coordination of the operation says a lot about modern police methods of tackling fraud.
helped plan it along with the Financial Conduct Authority (FCA), Serious Fraud Office (SFO) and the USA’s Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) and Secret Service. It stemmed from the City of London Police and Spain’s Policía Nacional starting to forensically examine reports of investors worldwide being sold bogus shares. Arrests were made across the UK.

The investigation then started to target those the authorities believed were at the very top of the organised crime gangs who run the boiler rooms. This stage saw the involvement of the aforementioned agencies; giving the operation a multinational flavour.

City of London Police Commander, and National Economic Crime Coordinator, Steve Head, said: “The arrests made across four countries highlight how law enforcement can work globally in the pursuit of suspected criminals who seek shelter in foreign lands so they can target innocent people with investment scams that wreak financial and emotional destruction.”

As an operation, it was a clear example of how investigating authorities work together and share intelligence. Two years ago, the Director of Public Prosecutions issued guidelines regarding cases with shared jurisdiction with overseas authorities. Our main investigating agencies now regularly work with their counterparts abroad and other agencies in the UK to create a joined-up response when an investigation is needed. It is often the case that fraud or other types of business crime span borders and, therefore, the jurisdictions of two or more countries.

The arresting of 110 boiler room suspects is a perfect example of a cross-border investigation. The task facing those who have coordinated it is to now make sure that the international teamwork continues. Those agencies involved in the investigation and arrest were keen to trumpet their success when carrying out the arrests. They now have to see this through to trial if it is to be deemed a genuine triumph. After all, arresting people is not difficult. Building a successful case against them can be. Rahman Ravelli has extensive experience of such cases in a variety of countries, we are more than familiar with what is required to mount such a case – and how you successfully defend yourself against one.

The DPP guidelines state that information should be shared at an early stage between prosecutors in the countries where the crimes are thought to have been committed. This information should not be divulged to a third country unless the state where the information originated gives its express permission. Those agencies involved in this operation now face the challenge of making sure they observe the independence of individual jurisdictions. It is likely that much of this has been considered and planned for in advance but those authorities linked to the operation have to make sure there is no possibility of one nation’s jurisdiction being hampered by what is conducted in one of the other countries involved. If the 110 arrests are, as is planned, followed up with prosecutions then thoughtful and well-planned discussions need to be held to decide exactly how the arresting and investigating agencies proceed from here.

It is likely that prosecutions will be brought in the nation where most of the criminal behaviour was carried out. Spain saw 84 of the 110 arrested within its borders as a result of the operation, as well as the closure of 14 boiler rooms. This could make it the logical country for prosecutions. And yet if all prosecutions are brought in one country, this can pose problems in preparing and moving evidence and witnesses from one country to another. If prosecutions are held in more than one country, the issue of evidence and witnesses becomes even more complicated.

The boiler room arrests are a firm reminder that improved cooperation between countries and their investigating agencies boosts the potential for success in investigations; particularly in cases of fraud and business crime which are often international and complex in nature. But success in cases is based on convictions rather than arrests. Everyone involved in this latest operation now has to prove they can work together to coordinate and deliver a prosecution case that brings that type of success. Without convictions, such international teamwork can only be judged a failure.

It is a reflection of this increasing international prosecution togetherness that we at Rahman Ravelli are being called on more and more for our experience in coordinating international defence cases. There is no reason to believe that this will change in the future. If anything, it is probably only going to become more common as agencies around the world look to their foreign equivalents to assist them in their investigations. Anyone arrested in such circumstances, such as the 110 rounded up in connection with boiler rooms, have to make sure their legal representatives know how to work on cases that have international, cross-border and multi-agency dimensions. The right legal team can mount a sound defence case. It may even be the case that the variety of agencies that have been involved in the investigation and prosecution may not be fully comfortable with, or experienced in, working with their new, international colleagues. This can offer a defence team opportunities to challenge the evidence and the way it has been produced.

As we saw earlier in this article, multi-agency, multinational investigations can look impressive in their early stages when arrests are going on in a number of countries. The real test for all those involved begins, however, when they have to turn arrests into convictions in one of those countries.
For more than a century it has been the symbol of luxury and achievement. The sign that the driver – or, as is often the case, the person being chauffeured – has made it. They have succeeded, made a fortune and can now drive the vehicle with the famous Silver Lady on the bonnet. The formal name for the Silver Lady is the Spirit of Ecstasy. That’s probably the feeling many people have had when taking delivery of their first Roller. It’s a sign that the owner has joined an elite worldwide club.

Unfortunately, Rolls-Royce is now gaining a reputation far less desirable. At present, it is under investigation in the UK, United States and India for corrupt business practices. This time last year, the company was accused of making payments to secure lucrative aircraft engine contracts in China and Indonesia. This prompted the company to appoint David Gold, a member of the House of Lords and former partner at the Herbert Smith LLP law firm, to review its anti-corruption procedures; particularly the actions of “intermediaries in overseas markets”.

Late last year, it was formally announced that the SFO was starting an investigation into Rolls-Royce’s overseas activities. Earlier this month, Rolls-Royce revealed in its annual report that it was now also under investigation in the United States.

The report stated: “The group is currently under investigation by law enforcement agencies, primarily the Serious Fraud Office (SFO) in the UK and the US Department of Justice (DOJ).”

The London-listed firm’s report emphasised that it was cooperating with the investigations but had yet to receive official notice of a formal DOJ probe, adding: “Rolls-Royce has been cooperating with regulatory authorities.
on both sides of the Atlantic in regard to allegations of bribery and corruption. The SFO in the UK has launched a formal investigation. The DOJ is also investigating these matters, however we have received no notification of a formal inquiry being launched in the United States.”

If that was not enough, however, the company is now under investigation for the way it has conducted business in India. India’s defence ministry has just ordered an inquiry into the purchase of jet fighter engines from Rolls-Royce in a deal reportedly worth $1.6 billion. The inquiry will centre on allegations of kickbacks over the deal that saw Rolls-Royce supply engines to state-run Hindustan Aeronautics Ltd (HAL) between 2007 and 2011.

The key factor in these investigations appears to be the role of intermediaries. In response to this, Rolls-Royce announced this month that it is reducing the number of middlemen it uses. It also said in its annual report that it has restarted its 24-hour ethics telephone line for staff to raise any concerns about the way the company is conducting business.

The report states that it is working to simplify its anti-bribery policies in line with Gold’s findings. He produced his interim report last July with a final version expected later this year. At this stage, the company is keen to be seen to be doing all it can to reduce the scope for any of its current and future activities being tainted by allegations of corruption. The problem facing Rolls-Royce is that whatever measures it introduces now may prevent future problems but they can do nothing to eradicate whatever happened in the past. We do not yet know the exact levels of wrongdoing that may or may not have been carried out in connection with the Rolls-Royce deals that are now the subject of investigation. It is possible that even Rolls-Royce itself does not know precisely what has gone on. There is another element of unknown that may also be troubling the company: are there any other instances of corruption carried out in its name that it does not yet know about? And what possible implications could they have for the company should they come to light?

Rolls-Royce seems both eager to discover what malpractice has been carried out in its name and determined to prevent it happening again. The company is, it has to be said, taking the steps needed to make sure nothing similar ever happens in the future. But why was it left until now to make sure that nothing illegal was being done around the world in the famous name of Rolls-Royce? We may be experts in compliance and, therefore, more aware than most of the need to run companies legally and safely. But there can be no excuse for Rolls-Royce not having already had measures in place to prevent, or at least detect, these instances before they became public knowledge.

The Bribery Act has made companies liable for the activities of anyone acting on their behalf anywhere around the world. It only came into effect three years ago, which is obviously after the Rolls-Royce deals in China, India and Indonesia that are currently under investigation. But a company of the size and stature of Rolls-Royce should have had robust compliance procedures in place years before they drafted Gold in to see what had gone wrong and make sure it never happens again. Whether or not a Bribery Act existed is irrelevant. It has always been the case that if a company can prove it has taken all possible steps to be legally compliant then it is more likely to receive a more favourable hearing should an investigation be carried out. If a company such as Rolls-Royce wants to prevent fraud and corruption it has to make sure its ethical stance starts at the top and percolates down through all levels of the company. It must involve close and on-going examination of the geographical areas where the company functions, the business sectors it trades in, the behaviour of its agents and business partners, the law in countries where it does business and any recorded incidents of business wrongdoing in those countries. Only then can the potential risk of bribery be accurately examined and negated.

Rolls-Royce probably knows all too well now that due diligence needs to include absolutely all aspects of a business deal; including hospitality, facilitation payments and referral fees. Clear reporting procedures must be created, introduced, publicised to staff and associates and enforced rigorously. That is the only way that a company can encourage, respect and act upon whistle blowing – and be most able to respond quickly, decisively and appropriately when any allegations come to light. By doing this, a company can show it had devised adequate procedures, had acted completely appropriately and reported anything wrong as soon as it was aware of it.

It is interesting to note that it is now eight years since someone began writing allegations of bad practice against Rolls-Royce. If Gold’s review is to be of any real benefit to Rolls-Royce, it needs to identify why these concerns were not acted upon quicker – and how future responses could be improved. Such a measure will not bring back the Spirit of Ecstasy at beleaguered Rolls-Royce. But a spirit of compliance would go some way to preventing the Silver Lady losing any more of her lustre.
It is often said that those without sin should cast the first stone. It’s a rather ancient way of saying that you should make sure your own affairs are in order before you look to examine and criticise those of other people. A “Do as I do” approach compared to a “Do as I say” one. But whatever phrase you want to use for such an attitude, you can bet that the SFO is feeling it should have been more of a “Do as I do” outfit in the light of recent news.

In fact, if anyone has to take such an approach, and be seen to be doing so, it is the SFO. It is the body that investigates financial wrongdoing and protects society by prosecuting those it believes are guilty of fraud, bribery or corruption. The SFO, therefore, has to be seen to be acting impeccably and with perfect financial probity when it comes to the law. Which makes it all the more embarrassing that it has had to seek £19M in emergency funding this month. To heap further shame on it, the reason it needs the money is because it has to pay HMRC for wrongly-reclaimed VAT and the fine that followed as a result. To anybody, this would be a big financial setback and a major loss of face. To an organisation that exists to ensure financial integrity this has to be seen as a tragedy; although farce is another term that could be used accurately in this case.

News of the SFO’s cap in hand approach to finance came out via a report from the Commons Justice Committee. The Committee announced good news and bad news for the SFO. The good news was that the SFO had been granted the £19M it was so desperate to gain; making its annual budget £55M. But the bad news was that the size of the request for extra cash was so large that it raised the question of whether the current funding arrangements for the SFO “are sustainable”, to quote the Committee. This is not a ringing endorsement of the SFO’s previously-stated desire to seek
extra funding from government as and when it needs it for major investigations and any resulting trials.

SFO Director David Green has made it clear on a number of occasions since the Libor scandal that his organisation felt it could seek extra finance whenever a really big investigation presented itself. This month, however, he appears to have had his hands full explaining that the £19M embarrassment was due to “historic legal liabilities” relating to payment of VAT that date back to his predecessor Richard Alderman’s time as director. The wrongly-reclaimed VAT relates to fees paid to counsel between 2009 and 2012. At present, Mr Green faces the issue of a claim for £300M being brought against the SFO by the Tchenguiz brothers in relation to their controversial and much-criticised arrest by the agency in 2011. Mr Green has indicated that he may seek more than the current £24M in emergency funding secured for this year as he looks to bring more people to trial while, at the same time, trying to manage the major problems of the Tchenguiz brothers’ legal action. The SFO has stated that the VAT problem “has not hindered our operations in any way”. But while that may be the case for the short term – now that it has effectively been bailed out by government – the longer-term prospects are nowhere near so cut and dried.

One reason for the uncertainty is that, as we write this, the Attorney-General’s department is examining SFO funding as part of the spending discussions for the financial year 2015–16. With the Justice Committee now about to ask the Attorney-General whether it feels the SFO’s ability to ask Parliament for extra funds is something that could or should continue, it remains to be seen what resources the agency will be able to command in future years. Any decision will have wide-ranging implications for companies or individuals that the SFO plans to investigate, now or in the future. It could, with some justification, argue that extra funding is only going some way to restoring some of what was taken in budget cuts that its previous director agreed to. With Rolls-Royce and Barclays investigations eating into resources, not to mention the Libor investigation itself, the SFO can argue a case for having genuine need of the extra millions.

But the VAT fiasco could not have come at a worse time, with Mr Green having made it clear this month that the SFO’s job is not to be “a regulator, an educator, an advisor, a confessor, or an apologist” when it comes to helping companies with ethics and compliance issues. He has said before that UK companies’ compliance with the Bribery Act is not something the SFO is duty bound to educate people about. His compliance statement came at an unfortunate time for the SFO, with its VAT problems giving the impression that the agency is more of a “Do as I say” rather than a “Do as I do” organisation. Yet the SFO’s problems can prove useful for the rest of us: a useful reminder that keeping your house in order is important for everyone in business.

As experts in compliance, we frequently help companies of all sizes and in all business sectors make sure they are operating in total accordance with the law. Such compliance advice ensures that companies can either prevent illegality being carried out in their name or, at the very least, make sure it is flagged up early and acted upon. Mr Green’s reluctance to speak on ethics and compliance may be understandable. But we already know that UK government guidance calls for compliance programmes and their effectiveness to be considered by the SFO when it decides to prosecute or enter into a deferred prosecution agreement (DPA) with a company where wrongdoing has been identified.

Quite what view it has taken of its own misdemeanours is likely to remain within its own four walls. The SFO is arguably in a position that few other companies and organisations ever find themselves in: it has a pre-arranged ability to request extra funding, good relationships with other agencies that investigate business wrongdoing, its own in-house experts in all manner of legal fields and an ability to set the parameters of business investigations.

The fact that it was still unable to make sure it met its legal requirements can be viewed with a smile by the rest of us. But the serious point it highlights regarding compliance should not be ignored.
Despite its often secretive nature, the issue of covert surveillance always seems to be the subject of attention. This recently led the Scottish government to reassess the role in society of such surveillance. Rahman Ravelli has just published an informative guide to people’s rights when it comes to surveillance. Here, we look at some aspects of the guide.

We are all under surveillance. Only some of us may not know it. The issue of surveillance has been a sensitive one for decades, with the need for privacy and civil rights being balanced uneasily alongside the authorities’ wish to prevent, or at least detect and prosecute, crime. In the UK, there are an estimated four million CCTV systems in operation; making it hard for even the most publicity-shy member of society to avoid being caught on camera.

This year, the Scottish government has been seeking views on a revised Code of Practice made under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). This code deals specifically with covert surveillance. It has been drafted to reflect changes both to minor issues – such as the name changes of some organisations in the original Act – and major factors, such as the amalgamation of Scotland’s eight police forces and the Scottish Crime and Drug Enforcement Agency. RIP(S)A gave designated public authorities a regulatory framework within which they could lawfully carry out covert surveillance. The latest Code of Practice is an attempt to reflect the changes we have just mentioned. But it is also part of an ongoing effort to make sure any such surveillance does not infringe on individual’s human rights, specifically under Article 8 of the European Convention on Human Rights (ECHR); the right to privacy.

The Regulation of Investigatory Powers Act 2000 – like its Scottish equivalent RIP(S)A – grants police powers regarding the use of informants, covert surveillance, undercover officers and material that demands expertise regarding disclosure and public interest immunity (PII). In many large cases, the use of “bugs” is commonplace, whether they be traditional listening devices, tracking gadgets or sophisticated software to locate a person via their
mobile phone or eavesdrop on their computers. There is also, of course, the good, old-fashioned practice of following someone.

For many years, surveillance was an area that went largely untouched by the law. There was the 1985 Interception of Communications Act, a 1984 Home Office guidance document on police operations and then the 1997 Police Act; which finally put covert surveillance on a proper statutory basis. RIPA was a more comprehensive Act and yet both it and the Police Act have to be complied with when placing a bug – RIPA as regards gaining authority to use the bug and the Police Act for gaining authority to enter premises to place the bug.

RIPA is the Act that divides covert surveillance into the categories of directed surveillance, intrusive surveillance and covert human intelligence sources. All three need some form of official authorisation. Directed surveillance involves the taping and filming of someone, intrusive surveillance involves surveillance in a person’s property – and requires the authority of a Chief Constable or the Home Secretary – and covert human intelligence sources (CHIS) involves a person (maybe an undercover officer or an informant) establishing a relationship with a suspect to obtain information. RIPA also provides the legal framework for phone and postal intercepts; neither of which are currently admissible in evidence.

Clients are often understandably keen to know what material obtained by covert surveillance can be used as evidence. Human rights and public interest immunity arguments can be used when it comes to seeking to prevent such material being used in court. Each type of surveillance has its own Code of Practice, which has to be observed. The surveillance has to be properly authorised under Article 8 (2) of the ECHR; which states that there should be no interference on a person’s right to privacy unless this has to be compromised due to “the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.” But a breach of Article 8 does not mean the material is automatically excluded as evidence. For this reason, a defence team could use Article 6 of ECHR – that using such material would breach a client’s right to a fair trial – as a much more forceful weapon than Article 8. Alternatively, challenging the prosecution to justify the length of time the surveillance was carried out and questioning whether such surveillance infringed upon a person’s right to legal professional privilege may be more viable routes of attack. Similarly, the use of undercover officers and the issue of whether they overstepped the mark is not only a major issue in the news at the moment – it also offers a defence team the opportunity to claim abuse of process following appropriate investigation.

The use of CHIS is an area where prosecutors can be under most pressure, with questions often needed to be asked about an informant’s exact relationship with the police and their reason for taking part in an undercover operation. In such cases, the issue of entrapment can be raised as well as challenges to the motivation and integrity of such informants. By pushing for full disclosure of all available materials, a defence team can highlight areas where police may have failed to follow up a related line of enquiry, disclose relevant material to the defence or pay the disclosure schedule proper attention.

Any defence team is looking to make the Crown prove the lawfulness of their actions and then – if the Crown fails to do this – investigate whether the proper remedy is endeavouring to have the evidence excluded. Both the use of covert surveillance techniques and the range of techniques can only increase in the future. This poses greater challenges to defence teams, who have to be fully aware of the full range of tactics available to them.

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Property fraud never really goes away. It may become a hot topic in the media, there may be high-profile court cases but then the issue may disappear from view and receive very little coverage. But it is still there.

Having handled some of the biggest UK property fraud cases, we are speaking from experience when we say that such incidents are always occurring. And that puts valuers and surveyors in a very important place. The duty of a valuer can be fairly straightforward when it comes to a mortgage application. They examine the property, check whether it meets the criteria of that particular lender, report on its condition and give an estimate of its value. The potential lender then makes a decision on whether it would be prudent to loan a would-be buyer the money to complete the purchase.

While it is a fairly straightforward process, it is also one of great responsibility. The valuer may be the only person other than the buyer to actually inspect the property. But that does not mean that they are always acting free of any responsibility or scrutiny. Many mortgage lenders now have systems in place to monitor trends in valuations and flag up anything that smells even slightly of property fraud. Valuers have, as a result, been accused of fraud. With valuers, it is the same as in many other professions – when times are

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**GOOD VALUE?**

*When the authorities start to look closely at property fraud, the issue of valuations always comes to the fore. Here, we outline why valuers and surveyors have to be seen to be completely scrupulous in all their dealings.*
tight, instances of fraud become more common or, at the very least, more detectable.

Lenders do not like being taken for a ride any more than anyone else. They are dealing in huge sums and know that they have to be careful if they are to avoid losing much of it in ill-advised lending that could have been prevented if valuations had been honest. As a result, valuers have to be able to demonstrate that their activities are beyond reproach. Figures have been bandied about that suggest one in every 50 valuations may be worthy of investigation. This is a figure based on suspicions about a number of valuers across the UK and a calculation of how many valuations they are likely to be carrying out. It is not a scientific figure – in fact, it is more of a guess-timate – and yet the fact that lenders are doing the maths to work out such statistics indicates that valuers are under scrutiny. Lenders are now coming to view choosing the right valuer as part of their strategy to prevent fraud.

Placed between buyers or sellers and lenders, the valuer is in a unique position. A position that runs the risk of upsetting one party to a deal or, even worse, laying the valuer open to accusations of fraud. So what can they do to avoid this? Valuers have to be seen to be completely honest in all their dealings. If they are not they can cost lenders great amounts of money and damage their standing in a business sector where being able to act with credibility is essential. The Council of Mortgage Lenders (CML) and the Royal Institution of Chartered Surveyors (RICS) have produced guidelines that state that valuers must declare any discounts or incentives that could distort an agreed sale price; which is especially relevant for new houses. The guidelines state that anyone with concerns about a valuation should raise the matter with RICS. In such circumstances, valuers have to be able to show they have acted appropriately at all times.

Yet it could be the case that a valuer comes under investigation months or even years after a valuation was completed. Having successfully represented a number of clients in large property fraud cases, we know how one party in a deal can come under suspicion from the authorities simply because a person or company they did business with years ago becomes suspected of wrongdoing. So what can they do to make sure they can convince the authorities that they are completely above board in their dealings?

Valuers are like any other profession in that they face demands from clients, rivals and third parties and yet have to make sure they respond to these and stay on the right side of the law. At Rahman Ravelli, we advise companies on compliance and help them devise, introduce, run and maintain internal systems that remove the potential for corruption among staff. It is fair to say that whether the valuation business is booming or valuers are scrapping around for work, no one in the profession wants to spend any more money and effort on compliance than they have to. But as a raft of court cases from any profession can show, compliance is not an issue where corners can be cut. It may be more appealing to valuers to carry on as they are, believing that they either have no need to check for the potential for wrongdoing or that, if there is some, it will never be detected. That is the short-term easy option. The long-term outcome, however, could be convictions, financial penalties, hours spent dealing with the authorities and, perhaps most damaging, a huge blow to the company’s professional standing. Such reputational damage can only lead to a loss of business. After all, who wants to hire a valuer whose judgement has been shown to be untrustworthy?

It is only when such a stark picture is painted that many people consider the value of compliance. When such outcomes are considered the importance of complying with legislation is clear. But it is not just about being seen to be legally safe. Any firm of valuers or surveyors has to recognise the need to make sure that the people they are employing to place a price on property day after day are doing so without their judgement being impaired or corrupted by any outside influence. It is hard to gauge accurately how much wrongdoing is being committed when it comes to valuation of property. But the professional bodies involved believe it is going on to some extent, the lenders – the customers when it comes to valuations – are aware it needs to be cracked down on and the authorities have come to the point where they are actively looking for indicators of property fraud and evidence with which to bring prosecutions.

Any valuer worth their salt must recognise the worth of making sure their own house is in order.
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