

POCA challenges

Proceeds of Crime Act 2002 – Ed Sautter explores challenges by the account holder

The decision of Mr Justice Laddie in *Squirrell Ltd v National Westminster Bank Plc and HM Customs & Excise (Intervenor)* [2005] EWHC 664 (Ch) has provided some comfort for banks as to their position under the Proceeds of Crime Act 2002 (POCA) when their actions are challenged by the account holder.

Squirrell was a company involved in the buying and selling of mobile telephones and had an account with National Westminster Bank Plc (NatWest). On 15 March 2005, NatWest froze Squirrell's account, but did not tell its customer why it had done so and declined to discuss its reasons with the customer. Squirrell (which was not legally represented) applied to the court for the account to be unfrozen, citing a lack of notice and seeking disclosure of NatWest's reasons for its actions.

NatWest's position was that it wished to comply with Squirrell's instructions in relation to the relevant account, but was forced to freeze it because of the provisions of s328(1) POCA. It was also prevented by the anti-tipping off provisions of the legislation from explaining its reasons for freezing the account.

The judge accepted that, on the material before the court, there was nothing to justify concluding at that stage that Squirrell's account contained criminal property, nor had HM Customs & Excise (HMCE), which had intervened in the proceedings, concluded at that point that any offence had been committed. However, because NatWest had a relevant suspicion, under s328 POCA it was obliged to freeze the account and wait for either seven working days or, if notice of refusal was sent by the relevant authority, to wait for an additional 31 calendar days. In the meantime, it was not allowed to make any disclosure to Squirrell that could affect any enquiries that HMCE might make.

The judge noted that in the present case it was not suggested that NatWest did not have a relevant suspicion or that its suspicion was other than reasonable and, for that reason, the judge did not regard himself as needing to consider the impact of the absence of the word "reasonably" from the expression "which he knows or suspects facilitates [money laundering]" in s328.

Although these provisions worked hardship in the present case, there could be no question of the judge ordering NatWest to operate the account in accordance with Squirrell's instructions because that would be to require it to commit a criminal offence. Because of the intervention of HMCE, Squirrell now knew why its account was frozen and the judge did not therefore express any views on the question as to whether he could have ordered disclosure by NatWest of its reasons for freezing the account.

Conclusion

Although the judge declined to deal with the interpretation of the word "suspects" in s328 POCA, nonetheless this authority is of some comfort to banks which, as a result of a suspicion, freeze accounts and then find themselves on the receiving end of applications to the court to operate the account and disclose their reasons for freezing it. The judge stated that, in his view, the course adopted by NatWest was "unimpeachable", doing precisely what the legislation intended it to do. Account holders in future cases might yet seek to attack a bank's actions on the basis that the suspicion the bank had was other than reasonable. But the fact remains that the word "reasonable" does not appear in s328 POCA and it is likely to be difficult for an account holder to assert that the bank did not hold a relevant suspicion when freezing the account.

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