

The Crime Special from The Network of Independent Forensic Accountants

## NIFA CRIME NEWS

NIFA members have seen a significant increase in their instructions in crime related matters over the past twelve months. Prosecutions under The Fraud Act are now being heard in the Courts, and there appears to have been a surge in employee thefts, frauds, drug dealing and cigarette smuggling, as people try to supplement their income in these times of austerity.

During this period, NIFA members have acted in some significant cases across the length and breadth of the UK, including the largest ever UK seizure of cannabis valued at £12.5 million, importation of cocaine valued at over £16 million, several multi-million pound frauds perpetrated against Government funds, together with numerous high value Confiscation cases.

The involvement of our members has contributed significantly to acquittals, cases being dropped completely or some of the counts being removed, large reductions in benefit and realisable amounts, and on some occasions the Confiscation proceedings being halted.

These results demonstrate the merits of having a forensic accountant as part of your team, who can produce a clear report, addressing the relevant facts and information, based upon a thorough and detailed examination of the evidence, and who can appear as a persuasive, but not partisan, expert in Court.

## A GAMBLE THAT DIDN'T QUITE PAY OFF

A professional gambler was alleged to have benefitted to the extent of over £2.2 million, arising from his possession of cocaine. The purchase price of the cocaine was £1,200, the remainder of the benefit arose from payments made into his bank accounts.

It was claimed by the Crown that these funds represented the Defendant's criminal activity and should form part of his benefit.

Our NIFA member established that the sums paid into these bank accounts derived from his professional gambling, which was on a serious scale, one bet alone (and a losing one) was for in excess of £350,000.

Any winnings made from professional gambling are exempt from Income Tax, with the relevant case being *Graham -v- Graham* [1925]. The reason being that if winnings were to be taxed, then it would only be fair if losses were tax deductible.

As a result, all of the payments made into the Defendant's bank accounts were accepted as being from his gambling activities and his benefit was assessed by the Court at £1,200.

Despite claiming he had assets of over £250,000, our NIFA member discovered charges over certain assets and that others did not belong to him. He was ordered to pay £1.



# HOW EXTORTIONATE DOES A LOAN HAVE TO BE?

## What sort of health warning would a loan with an APR of 152,775% come with when advertised on daytime TV?

**Frankly, nobody in their right mind would touch it with a barge pole, but this is an example of the APR rates being charged by unlicensed money lenders – and their business is booming.**

Throughout the UK, unlicensed money lenders, or as they are more commonly known 'loan sharks', are operating thriving businesses, lending to the most vulnerable, largely as a result of their uncreditworthiness, but also praying upon their naivety. A loan of £100, with interest of a further £100 attached to it, repaid at £20 per week, may seem manageable. Generally that is just the start of the problems.

As it becomes increasingly difficult to manage the repayments, the loan shark will offer top up loans, with the usual extortionate interest rate attached, and so the borrower becomes locked in. More often than not, they keep scrimping together the weekly payments, not really knowing how much they have repaid. Often years of misery ensue.

Many loan sharks are also involved in other criminal activities eg. contraband tobacco, bootlegged booze and drug dealing. Therefore, at times, their collection methods can turn unsavoury, whether this be through threats, property damage, physical assault and even taking payments 'in kind'.

Across the UK there has been an initiative to try and eliminate loan sharks, with the creation of Illegal Money Lending Teams, often as departments within local Trading Standards. They use surveillance and often raid the homes of the loan sharks, seizing cash and loan ledgers.

As Forensic Accountants we are often asked to examine the loan ledgers seized with a view to establishing the extent of the money lending activities, how much has been loaned and repaid, and to calculate examples of the APR's being charged. This work assists the Court when passing sentences.

But extortionate loans are not just made to uncreditworthy individuals. In these austere times, businesses have found

it difficult to obtain funding from High Street Banks and we have seen examples of, what would appear to be extortionate loans, being upheld by the Courts for payment.

One such example was a loan required by a business at short notice in order to complete a project. An introduction was made to the owner of the business via professional advisers and a loan for £100,000 was obtained, with interest attached at £10,000 per month. The repayment terms were to be over six months. This was set out in a loan agreement between the parties.

Unsurprisingly there was a default in the payment terms and the company, and the Directors who provided personal guarantees, were taken to Court.



The Directors argued that this was an extortionate credit agreement and that it should be set aside.

In order to ascertain whether or not the loan was extortionate, the Judge considered initially the Consumer Credit Act 2006. However, this only applies to individuals and partnerships, not a limited company. Therefore, the Judge had to then consider the credit worthiness of the limited company. Having done so, he formed the view that the company had no real prospect of ever repaying the loan, and that this was confirmed by the chain of events. As a result of its poor credit rating at the time of receiving the loan, the Judge considered that the risk

attached to such a loan warranted the interest rates applied within the Loan Agreement.

As a result, the Judge upheld the terms of the Loan Agreement, and interest continued to accrue at a rate of 10% per month of the outstanding capital balance. The overall sum due, including interest, was now well in excess of £250,000 – and that was not considered by a Court to be extortionate!

If you do have any clients, particularly individuals, who are caught up with loan sharks or have had to take out credit with licensed lenders, at seemingly extortionate rates, there is perhaps some recourse under the Consumer Credit Act 2006. Also, if such loans are with unlicensed lenders, there are local branches of Illegal Money Lending Teams throughout the UK who are seeking to stamp out such activity.

However, it is clearly more difficult for a company to show it has entered into an extortionate credit agreement, as the above example illustrated.

As Forensic Accountants, we are often asked to consider the credit worthiness of a company at the time of entering into such a loan. More often than not the company is trading whilst insolvent, and had no real prospect of repaying in full, but not always. It may assist a case if a clear picture of the company's financial affairs, at the time of obtaining the loan, can be set out for the Court.

As lending is still on a tight leash, to both individuals and companies, it seems that unscrupulous money lenders will continue to be in demand. Your clients must realise that the consequences of getting involved in such arrangements can be extremely penal.

## DIAMONDS ARE AN ACCOUNTANT'S BEST FRIEND!

**These confiscation proceedings followed the conviction of an accountant for embezzlement of money from a jeweller.**



## TIME PLEASE GENTLEMEN

**A husband and wife management team of a large pub were accused of fraud as a result of abusing a meal voucher scheme that was in place, with a view to attracting more trade. Customers of the pub, if holding a voucher, were entitled to £1 off their main course meal.**

The pub's till records indicated that the full value of meals was being offset by the vouchers. As a result, it was implied that the managers of the pub were retaining the cash, as the entries onto the tills were in their names.

Our NIFA member examined the accounting records of the pub, in particular the till records, and identified that these were unreliable as entries were being made in the name of the managers when they were not working at the pub. In addition, it was identified that staff frequently used the names of others when entering transactions on the tills.

The case was dropped following receipt of our NIFA members report.

The Crown alleged that his benefit from criminal conduct over a six year period was almost £375,000.

However, our NIFA member established that this figure was exaggerated by the Crown, using one of its common accounting errors and one of its unwarranted assumptions.

The accounting error was the inclusion of a business bank account, but recognising only the net profit as legitimate income instead of the business' takings being lodged into the account.

The unwarranted assumption was that the respondent had spent an amount of cash, equal to that derived from government expenditure statistics, from sources unknown despite household expenditure being clearly met from bank and credit card accounts.

In the event the case settled on the figure for the admitted embezzlement, being just over £30,000.

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## POST OFFICE THEFTS

**A number of our members are being instructed in matters concerning the theft of funds from Post Offices by sub-postmasters.**

Many of these are adamant that they have not stolen the funds and that the problems lie with the Post Office's accounting software, known as the Horizon system.

It seems clear that there are problems with the Horizon system, although the Post Office maintain that it is robust. As a result, a support group has been set up for those affected – [www.postofficevictims.org.uk](http://www.postofficevictims.org.uk).

Many Defendants have admitted that they falsified the records of their Post Offices in order to keep the records balanced. However, they have denied theft.

**Our members have identified problems with this system, and on numerous occasions the charges in relation to theft have been dropped, leaving just the false accounting charges.**

## LIES, DAMN LIES, AND STATISTICS

**When Defendants are considered to have a cash lifestyle, the Crown often tries to introduce an estimate of household expenditure met from cash. If the cash cannot be shown to have been earned legitimately, then it is assumed that it must have been made from crime.**

However, in one of our NIFA member's cases, the defence solicitor took the trouble to visit the Office of National Statistics ('ONS'). They were told that it was inappropriate and unsafe to apply UK statistics on household expenditure to one person's circumstances. Armed with this advice, the Crown were advised that the Defence would call the ONS person as a witness.

**The Crown suddenly decided that this element of the case would be dropped.**

Therefore, if your client is faced with a benefit figure for cash lifestyle, it seems that the ONS figures are open to challenge.