



# A receipt for deceit

*The Network of Independent Forensic Accountants' Peter Smith explains how the Proceeds of Crime Act can be used to claw back funds from fraudulent employees...*

In light of proposed pay freezes in the public sector, higher taxation, the squeezing of bonuses in the finance sector and the increasing risk of unemployment, the pressure on employees to maintain their standard of living poses a significant risk to employers.

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The effects of the recession are already being felt by way of increasing employee frauds within business and public sector organisations. According to CIFAS, the fraud

prevention service, the number of cases filed by its members under ‘Dishonest action by staff to obtain a benefit by theft or deception’ (eg. the falsification of expenses or timesheets) increased by 69% in the first six months of 2009, when compared with the equivalent period in 2008.

This indicates that the impact of the recession is cutting into the heart of our industry, as more employees turn to fraudulent means as a way of supplementing their legitimate income.

Barely a week goes by without reports of embezzlement, misappropriation of funds and deception. Messrs Madoff and Stanford have created front page news in recent months, as has an employee of a large accountancy firm who forged his expenses to fund his wife’s £15,000 per month expenditure needs.

It is highly likely that the first quarter of 2010 will see an increase in employee frauds as the expense of Christmas

bites hard, with credit card bills landing on doormats all too soon after the festivities. It is at this time that employers should be at their most vigilant.

Upon discovery of a significant fraud, it is advisable to contact the police, who will assist with a criminal prosecution. It is equally important to speak with both an employment lawyer, as to how to deal with the employee, and also a fraud lawyer with a view to stopping any stolen funds being dissipated or moved to tax shelters. This may be by way of obtaining a freezing order, which restricts the movement of assets by the employee.

Once the assets are frozen, a civil recovery action may then be formulated by the lawyers. However, this may be costly.

The advent of the Proceeds of Crime Act, pending a successful prosecution, provides an alternative means of recovering monies from the employee, although it may take considerably longer than a civil recovery action.

In a recent matter involving a member of the Network of Independent Forensic Accountants, the managing director of a company pleaded guilty to stealing £2.4m over a period of 11 years. This almost brought the company to its knees, and it was only able to continue trading, and feeding the lifestyle of the managing director, by making redundancies. The loss of jobs, in order to allow the managing director to continue diverting substantial funds from the company, was looked on dimly by the judge, and the defendant was sentenced to seven years in prison.

Thereafter, an application was made under the Proceeds of Crime Act to recover funds. The assets of the managing director were restrained, in order to avoid them being dissipated, and proceedings commenced with a view to recovering the maximum amount of the managing director's remaining available assets.

Whilst much of the money had been spent on lifestyle, there remained significant properties in his, his wife's and joint names.

Under the Proceeds of Crime Act, gifts made to a wife or other parties may be shown to be tainted gifts. If that is found to be the case by the court, then it may order these gifts to form part of the realisable assets of the defendant. This is particularly common in respect of properties purchased with ill gotten gains, but held in the name of the wife or another relative. The Proceeds of Crime Act cuts through this and will capture such assets.



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In addition, the court has the power to include what it considers to be hidden assets within a defendant's realisable assets, even though there may not be a readily identifiable asset.

The powers given to the court under the Proceeds of Crime Act are draconian, and far more powerful for the purpose of seeking a financial recovery following employee theft than those available under civil remedies.

The penalty for not complying with a Confiscation Order is further imprisonment. In a recent case, a defendant was sentenced to a further 10 years in prison as they had not complied with the order made by the judge – yet another measure of the draconian nature of the Proceeds of Crime legislation. A Confiscation Order is often described as a millstone around the defendant's neck, as it remains with them for life until settled in full. If it isn't settled, then they risk further imprisonment until such time as it has been paid off

or varied by the court, due to proving an inability to pay owing to a change in circumstances.

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Therefore, if a company can wait, the Proceeds of Crime Act may be the best route to maximise the recovery from an employee's theft, given its draconian nature and the ability to capture both tainted gifts and hidden assets as part of the recovery process.



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