Gambling, money laundering and reasonable suspicion: a bank's right to freeze customer accounts

Synopsis

In a case that provides a welcome clarification for financial institutions concerned about money laundering risks, the High Court has ruled, in *Iraj Parvizi v Barclays Bank Plc [2014] EWHC B2 (QB)*, that a bank's decision to freeze a customer's bank account where there was a genuine suspicion of money laundering did not constitute a breach of contract.

The Court also considered what level of "genuine suspicion" a bank would need to show to take such steps. The Court reiterated the position in *R v Da Silva [2006] EWCA Crim 1654* and *Shah v HSBC Private Bank (UK) Ltd [2012] EWHC 1283* that the threshold was a low one: the suspicion need only be "more than fanciful".

Background

In *Iraj Parvizi v Barclays Bank Plc [2014] EWHC B2 (QB)*, Mr Parvizi, a professional gambler, sought to bring a claim against Barclays for breach of contract. He argued that the bank, in freezing his account at a critical time, had caused him to suffer considerable financial losses, namely by preventing him from making significant gambling gains.

By contrast, Barclays' argued that it had been justified in its actions as it had detected suspicious account activity. Miss Walley, an analyst in Barclays' anti-money laundering team, carried out a review of Mr Parvizi's account following receipt of an internal report from the Holborn branch of Barclays. In her witness statement, she explained that her suspicion was based on the significant gambling activity, several large transfers of money to gaming companies and the inability to link Mr Parvizi to the source of funds in relation to four particular transactions. Further, her Google search alerted her to the fact that Mr Parvizi had been investigated by the Financial Services Authority. As a result, Miss Walley made a Suspicious Activity Report to the National Crime Agency (then the Serious Organised Crime Agency) seeking permission to carry out Mr Parvizi's instructions.

Accordingly, the bank sought to strike out the claim on the basis that Mr Parvizi had no reasonable grounds for bringing a claim.

The question

The question for the High Court was whether Mr Parvizi had any real prospect of establishing, at trial, that Miss Walley did not have a relevant suspicion that was "more than fanciful".

Mr Parvizi argued that Miss Walley's statement lacked coherence and gave no indication of how she formed her suspicion that his gambling constituted money laundering. He submitted that, as a professional gambler, the transactions were all with reputable bookmakers.

The decision

However, the High Court disagreed with Mr Parvizi and granted Barclays' application to strike out the claim. It concluded that, despite the fact that Mr Parvizi had probably suffered financial loss as a result of his account having been frozen, he had no real prospect of success at trial. There was no real prospect of him establishing that Miss Walley did not have a relevant suspicion that was "more than fanciful".

In reaching its decision, the High Court applied *R v Da Silva [2006]* and *Shah v HSBC Private Bank (UK) Ltd*. Suspicion must be more than *"a vague feeling of unease"* and the law *"does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts' or based upon 'reasonable grounds'."* Suspicion must be *"more than fanciful"* but it is for the party alleging suspicion, i.e. the bank, to prove the existence of suspicion to the extent that it provides justification for not following client instructions.

The Court did concede that there was arguably a lack of reasoning in some of what Miss Walley had said in support of her suspicion. In particular, it highlighted that it was difficult to understand why she did not make an inquiry of Mr Parvizi's relationship manager at the bank and why the details in the witness statement did not appear precisely to match those in the SAR. However, it was satisfied that the evidence established that her suspicion was more than merely fanciful.

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Practical implications

- A bank can freeze the account of a customer where it has a genuine of suspicion of money laundering without fear that it will be breaking its contractual obligations towards that customer by not following its instructions.
- However, it will be for the bank to establish the primary fact of suspicion in order to justify not following customer instructions.
- Helpfully the suspicion does not need to be “clear” or “firmly grounded” but need only be “more than fanciful”.
- A bank should ensure that a structured process is in place for dealing with such suspicions. In particular, the process should involve approaching the customer’s relationship manager, if one exists, to discuss the suspicions. A careful written record should be made of the suspicions, the reasons behind those suspicions, the discussions with any relevant persons, and should append any relevant documentary evidence.
- The SAR should be produced carefully and with sufficient detail on the assumption that it may be subject to examination in Court on a later date.
- The bank should be careful to not commit a “tipping off” offence under POCA.

If you have any questions on the above or anti-money laundering and fraud and white collar crime more generally, please contact David Hall or Thomas Webb.

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