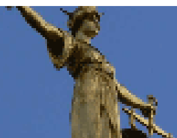
Saunders
LAW PARTNERSHIP



En Passant

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The newsletter of Saunders Law Partnership

A Judge of Your Peers

In July 2009, the Court of Appeal withdrew the right of jury trial from Saunders Law Partnership client John Twomey, and ordered that he and his three co-defendants be tried on robbery and related charges, by Judge alone, the first case to be the subject of such a court order.

This will be Mr Twomey's fourth trial, the first trial having been aborted due to his ill health. At his second trial the jury was unable to reach a verdict, and the third jury was discharged amid suggestions of jury tampering, evidence of which has never been communicated to the defence, and on the basis of material only revealed by police to the trial judge and Appeal Court behind closed doors.

In November 2002 the Home Affairs Select Committee decided that there were 'cogent arguments for dispensing with a jury trial where there is a real and present danger of jury tampering.' After some fierce debate this major change to our Justice system was enacted in The Criminal Justice Act 2003(CJA) although many MPs and Lords questioned the wisdom of such a move. Cross-bencher Lord Condon (former Commissioner of the Metropolitan Police from 1993 to 2000), for instance, argued that:

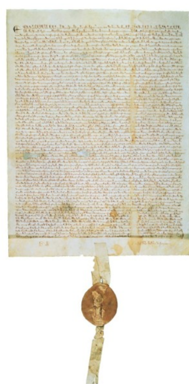
'..Many of my former colleagues, chief constables, feel passionately about this issue and consider that trial by judge is the only way forward. I understand where they come from in their argument, but I do not share in its force. Like other noble Lords, I believe that the remedies must lie in better protection of juries..'

The CJA provides that an application for a judge-only trial can only be made where 'there is evidence of a real and present danger that jury tampering would take place' and that, notwithstanding any other arrangements which could be implemented (including jury protection), the likelihood of tampering is 'so substantial' that the interests of justice dictate that the trial be conducted without a jury.

In Mr. Twomey's case, the Court of Appeal overruled the decision of Mr. Justice Calvert-Smith, Presiding Judge of the South-Eastern circuit and a highly respected former Director of Public Prosecutions, that any risk of tampering with a future jury could, in fact, be met by having a protected jury. During debate on the new clause in 2003, Baroness Scotland (then Minister of State for the Criminal Justice system and Law Reform at the Home Office, and currently Attorney General) put it rather well:

'….I hope that the amendments make it abundantly plain, if it was not before, that there is no question of the police and/or prosecution simply whispering in the judge's ear, in order to secure a juryless trial' …'

So much for government reassurances.



Jury trial has a long and honourable history in England which can trace its legacy back to at least the 12th Century. Following our lead, jury trials in criminal cases were a protected right in the original U.S. Constitution which has been extended in subsequent Amendments.

How sad and how concerning it is, therefore, that the right to jury trial in serious cases can be with withdrawn on the basis of secret information, imparted to judges behind closed doors, from which the defendant is excluded and is thus unable to respond. SLP is now looking to a recent decision in the House of Lords (Home Secretary-v-AF and others) in support of further arguments against the Court of Appeal ruling. In *AF* the House of Lords endorsed a ruling in the European Court of Human Rights that those [subject to control orders] had to be given sufficient information about the allegations against them to be able to challenge the case against them. Senior Law Lord, Lord Phillips observed: "A trial procedure can never be considered fair if a party to it is kept in ignorance of the case against him." Amen to that.

Weblink: James Saunders discusses the case in the Guardian

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Fair Trade?

The Consumer Protection from Unfair Trading Regulations 2008, which came into force last year, have rapidly become the weapon of choice for Trading Standards. The Regulations affect all businesses that trade directly with consumers, ranging from clairvoyants to double-glazing salesmen. Ignorance could land traders with a hefty fine or, in the worst case, a prison sentence of up to two years.

The Regulations prohibit aggressive, misleading and other unfair commercial practices (and their promotion.) Whether a practice is unfair or not will depend on the circumstances of the case, but the Regulations set out a schedule of some 31 commercial practices that will always be considered unfair. These includes false claims about the product, bogus closing-down sales, prize-draw scams, the operation/promotion of pyramid schemes and aggressive doorstep selling.

The legislation attempts to establish a catch-all duty to act in a manner consistent with the reasonable expectations of the average consumer, allowing the consumer to make free and informed buying decisions. This move has been welcomed by many businesses, as demonstrated in recent research which showed that 53% of small firms believe their profits have been hit by rivals using unfair sales practices. However, the scope of the Regulations are so wide that even the well-meaning trader needs to be very careful they are not inadvertently carrying out or promoting a prohibited practice.

Under the Regulations every local authority's Trading Standards team is under a positive duty to enforce the Regulations. Authorised officers have been granted various powers (including the power to make test purchases and the power of entry and investigation etc…) to ensure that they are sufficiently equipped to control unfair commercial practices. In the course of acting for a number of clients, the Saunders Law Partnership has already witnessed the vigour of investigators first-hand. In addition to representing traders facing an investigation/prosecution, SLP is able to provide compliance advice in respect of a business's ongoing commercial practices and recommend any necessary modifications.

www.financial-services-law.co.uk goes live

Following the success of www.traffic-motoring-law.co.uk and www.health-and-safety-law.co.uk, the firm has launched its third micro-site www.financial-services-law.co.uk. Offering an overview of the many areas of civil, criminal and regulatory law affecting the financial services industry, the site draws on the firm's experience in this field. The site sets out how the firm can assist both those who have lost out at the hands of the financial service providers and those who find themselves on the receiving end of an FSA investigation, a prosecution under the Financial Services and Market Act 2000 or a civil action.

The Company You Keep

Nearly some three years after it received Royal Assent, the final provisions of the Companies Act 2006 will come into force on 9 October 2009. These provisions include the devolution of powers to the Registrar and the replacement of the familiar Companies House forms. Most of the significant changes have already passed into law and it is imperative that any director or individual contemplating becoming involved in the running of a company is aware of recent changes. So, what are the major changes and provisions of the Act?

All companies

- The Act sets out a statement of directors' general duties, codifying the existing case-law based rules.
- Companies are able to make greater use of e-mail for communications with shareholders.
- Directors automatically have the option of filing a service address on the public record (rather than their private home address).
- All companies must have one natural person as a director – i.e. they cannot have all corporate directors.
- Revised rules for company names.
- Companies are no longer required to specify their objects on incorporation.

Private companies

- Private companies are not required to have a company secretary.
- There will be separate and simpler model Articles of Association for private companies.
- There will be a separate, comprehensive "code" of accounting and reporting requirements for small companies.
- Private companies need not hold an annual general meeting unless they positively opt to do so.
- It is easier for companies to take decisions by written resolutions.
- Simpler rules on share capital, following the removal of provisions that are largely irrelevant to the vast majority of private companies and their creditors.

The consolidating Act, being the longest in British Parliamentary history with 1,300 sections and covering nearly 700 pages (the contents alone are 59 pages), is a daunting tome. However one of the intentions behind its introduction is to make it easier to run a small company. At SLP we are happy to advise on any compliance issues impacting on your business model arising from the Act.

Defending Prosecutions - Audits - Seminars
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Financial Dodgy Dealings

Saunders Law Partnership represents clients in all aspects of financial crime and bad practice. Readers may or may not be surprised that solicitors themselves are not immune from becoming entangled in murky financial affairs.

For example, collapsed Leeds law firm Fox Hayes was recently fined by the Financial Services Authority (FSA) for its part in a £15 million boiler room fraud which took in 670 UK investors. Fox Hayes used its status as an FSA-authorised firm to 'recklessly' approve 34 unauthorised promotions put out by Spanish boiler rooms to defraud British investors of millions of pounds. The Court of Appeal ruled that Fox Hayes had "every reason to doubt the overseas company's reliability and, probably, their honesty". In boiler room frauds, unauthorised 'brokers' (often operating off- shore) cold call investors and pressure them into buying worthless (or sometimes non-existent) shares. After the case went to the Court of Appeal, the Fox Hayes fine was increased from £146,000 to £955,000.

SLP specialises in assisting victims of such mis-selling to try and recoup their losses. Recently we managed to make a substantial recovery from an FSA regulated stock brokerage which had pressure-sold high risk shares to our investor-client.

Another example of solicitor malfeasance, was Phillip Griffiths, a solicitor who received 6 months imprisonment (reduced from 15 months on appeal) for acting in the conveyance of a property when it should have been clear to him that the transaction was at a substantial undervalue and had reasonable grounds for knowing or suspecting that the transaction involved money laundering, although he had no knowledge or suspicion of the true facts. The purchaser (an estate agent who was also imprisoned) had bought the house at a significantly reduced value, in the knowledge that it had originally been purchased with the proceeds of crime, and in the knowledge that the property was the subject of pending confiscation proceedings. Another Solicitor, Brian Dougan, pleaded guilty to using his firm's business account to handle money from a red diesel money laundering scam and was said by the judge to being a "naive victim of a sophisticated criminal". He received 3 months imprisonment.

Whether you are an investor, or a professional advisor, it pays to be careful. SLP offers an expertise in both defending financial crime and assisting victims of mis-selling. Why not access our financial services micro site at www.financial-services-law.co.uk or call Stephen Gilchrist or Iain Wilson for a no-obligation discussion.

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Edited by Stephen Gilchrist and Iain Wilson. © Saunders Law Partnership 2009. These articles are intended to give a brief overview of the areas considered and highlight areas for further consideration. They do not constitute legal advice.