Cheating the public revenue (R v Lunn)

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Corporate Crime analysis: Should a series of tax cheats be charged as a single count or as a series of individual counts? Edward Henry, barrister at QEB Hollis Whiteman, reports in light on the recent Court of Appeal ruling in R v Lunn.

Original news

R v Lunn [2017] EWCA Crim 34, [2017] All ER (D) 136 (Feb)

The Court of Appeal, Criminal Division, dismissed the defendant's appeals against conviction and sentence in relation to four counts of cheating the public revenue. Among other things, it would have been wholly impractical to have reflected the alleged criminality in one count by charging individual cheats based on individual clients and their accounts and tax returns over the number of years, since such an indictment would have ran to many hundreds of counts. In relation to sentence, the judge's approach had been plainly correct in the circumstances.

What was the background to the appeal?

On 10 February 2017, Christopher Lunn, accountant to TV celebrities and media stars, had his appeal against conviction and sentence dismissed by the Court of Appeal. He had previously been convicted of evading more than £6m in tax by concocting fraudulent claims, inflating accountancy fees and the fraudulent deployment of trading losses. Lunn had used these methods to evade paying both his own and his clients' liabilities. In so doing, while he became popular with an expanding client base, which (as HMRC broadly conceded) was unaware of his nefarious activities, he made himself and his firm (CLAC) an obvious target for investigation.

From 1996–97, when self-assessment was introduced, CLAC's clientele had burgeoned from 867 clients to more than 7,000. By 2008–09, HMRC's local tax inspectorate or 'local compliance' began to express serious concerns in respect of a significant number of tax returns submitted by CLAC on behalf of clients and suspicion arising from the level of skill and care employed by CLAC in its dealings with HMRC as an authorised agent.

In October 2009, the Criminal Investigation Unit of HMRC began a criminal investigation into CLAC. Its provisional view was that CLAC was responsible for a 'systematic attack on the ITSA [income tax self-assessment] system'. The provision of materially false documents during the investigation also suggested that Lunn and CLAC had not simply been negligent and unprofessional in its dealings with HMRC, but that there were reasonable grounds for concluding that CLAC had systematically committed fraud in such dealings. The following year he was arrested. A trial in October 2013, on six counts, resulted in two acquittals in January 2014, with the jury hung on the remaining four. In late 2015, following a retrial, some five years after HMRC launched its investigation, Lunn was finally convicted on four counts of cheating the public revenue. He was sentenced to five years' imprisonment on 11 January 2016. Nearly a year would elapse before his appeal was heard.

Lunn claimed that it was a vendetta caused by professional envy and the HMRC's resentment of his success. For some of his former clients, his downfall in 2010 was personally devastating.

I represented one of his former clients during an HMRC investigation, where a potential prosecution was seen off. The pain and anxiety this arduous process inflicted on the client was harrowing. It gave the lie to George Carman's QC famous quip—'Some accountants are comedians, but comedians are never accountants.' There was nothing funny about the painful, expensive and uncertain process my client underwent before the Crown Prosecution Service refused charge.

What issues did this case raise in relation to prosecutions alleging offences spanning a number of instances over a period of time? What did the Court of Appeal decide, and why? To what extent is the judgment helpful in clarifying the law relating to when a course of conduct amounting to an offence can be including in a single count on the indictment?

The case argued on appeal raises interest on a number of fronts: first, the defence made the submission that count one of the indictment, cheating the Revenue, spanned nearly nine years, suggesting that it was bad for duplicity, contrary to the Criminal Practice Direction or was otherwise unfair and unmanageable.

The court held that the offence had properly been charged as a single count alleging a course of conduct.

The court held that such an offence of cheating the Revenue as a course of conduct, spanning almost nine years, was neither unfair nor bad for duplicity. It held emphatically that to charge a series of individual cheats was impractical because the indictment would have run to hundreds of counts.

Referring to rule 10.2(2) of the Criminal Procedure Rules, SI 2015/1490, the court stated that more than one incident of the commission of an offence could be included in a single count if, taken together, they amounted to a course of conduct—see *R v Canavan (Darren Anthony)* [1998] 1 WLR 604, [1998] 1 All ER 42. The prosecution schedules and spreadsheets showing falsified claims, identifying the clients and members of staff involved, and presenting the figures in a comprehensible form had safeguarded the appellant's rights.

What are the implications for corporate crime lawyers who are advising defendants facing prosecution for financial crime? What practical lessons can those advising take away from this case?

The major issues for corporate crime lawyers who are advising defendants facing tax investigations and the risk of prosecution for cheating the Revenue are as follows:

- questioning whether one should self-report and, if so, at what point
- questioning whether one should one wait for a CoP 9 letter or not—this is a value judgement which is exquisitely balanced
- ensuring that, if the decision to self-report is made (before or after a CoP 9 letter), the disclosure made in respect of it is absolutely accurate—this is vital, as a mistake may well be characterised not as a careless error but deliberate deceit and could jeopardise any contractual disclosure facility under CoP 9 and increase the risk of prosecution.
- preparing for swingeing penalties on top of settling outstanding liabilities

Interviewed by Lucy Trevelyan.

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