

## Chapter 7: Other proceedings

### Operation Stockade

- 7.1 In January 1997 Customs officers began an investigation into Fort Patrick, a bonded warehouse in Ipswich. Their investigations showed that a massive outward diversion fraud was operating from the warehouse. Spirits, wines and beers stored at Fort Patrick were removed by between eight and ten independent groups referred to as “cells” on the basis that they were being properly consigned to a bonded warehouse in Europe and therefore did not attract duty. The investigation into the diversion fraud was known as Operation Stockade. Ultimately ten defendants were charged with offences alleging fraudulent evasion of excise duty and Value Added Tax.
- 7.2 The prosecution case was that the warehouse never traded lawfully. Of some 1500 withdrawals of goods during 1997 only a handful were not diverted without payment of duty. The goods were not sent to another bonded warehouse in the European Union, as the paperwork purported to show, but were diverted on to the domestic market. The excise duty and VAT lost by reason of the activity of those connected with Fort Patrick warehouse was in excess of £100 million, the largest such loss encountered in any single enterprise.
- 7.3 The prosecution alleged that Christopher Grant was the principal behind the setting up and operation of Fort Patrick as a bonded warehouse. Two others, Nash and Sweeney, were said to have been involved with Grant in the running of the Fort Patrick Bond. Two others defendants, Boporan and Bajwa, were alleged to be the buyers and distributors of loads leaving Fort Patrick. It was said that between March and September 1997 they were responsible for the diversion of the loads on 194 lorries, apparently bound for a bonded warehouse in Spain but in fact diverted on to the domestic market. It was the prosecution case that five other men, Malcolm Gell, Alan Smith, Martin Challis, Paul Jenkins and David Johnson, had also been part of the conspiracy to defraud the Revenue. Their role, it was said, had been to act as either hauliers or drivers handling the collection and diversion of the loads.
- 7.4 The prosecution relied on observation evidence obtained by Customs officers on surveillance, showing the men taking the loads in lorries hired by Gell and often using false names, to various locations in the United Kingdom including a warehouse operated by Boporan and Bajwa where loads were taken and broken up. A telephone schedule of calls made showed extensive contact between all those allegedly involved. The goods received into the Fort Patrick Bond and later diverted on to the domestic market came from a number of sources. About 37% of the goods came from London City Bond: that was the sole connection between Operation Stockade and the London City Bond cases.

- 7.5 The hauliers and drivers admitted that they had collected goods from Fort Patrick. However, it was their case that they had no knowledge of a conspiracy or any awareness that they had participated in a criminal enterprise to divert lorry loads of alcohol. Gell's case was that he acted innocently on instructions received from another man. Challis, Smith, Jenkins and Johnson asserted that they had only acted as jobbing shunter drivers and were not concerned with the final destinations of the loads they collected. They admitted they had often used false names, but this was because at the time they had also been in receipt of unemployment benefit and had not wanted to declare their earnings.
- 7.6 Boporan and Bajwa both pleaded guilty before trial. Bajwa was sentenced on 30<sup>th</sup> July 1999 by HHJ Maher to six years imprisonment in relation to Operation Stockade, with two years consecutively in relation to his part in Operation Fajita. That fraud, to which reference is made elsewhere in this Review, had been committed between November 1997 and February 1998. It concerned an outward diversion fraud of goods from London City Bond to which the activities of Bajwa and those involved with him were allegedly directed following the closure of the Fort Patrick warehouse. Boporan was sentenced on 3<sup>rd</sup> October 2000 to 5 years imprisonment for his part in Operation Stockade.
- 7.7 In advance of the trial of the remaining defendants an application to stay the proceedings as an abuse of process was made in October 2000. Part of the application was based on a connection between London City Bond and Fort Patrick. It was suggested that HMCE were, or may have been, aware of the movement of dutiable goods from London City Bond to Fort Patrick and had allowed those movements to continue. It was submitted that the fraud could have been brought to an end at a much earlier stage thereby preventing the involvement of the defendants and saving the Revenue the loss of millions of pounds. The defence argued that in those circumstances the judge should exercise his discretion to stay the proceedings on the ground that it would be contrary to the public interest in the integrity of the criminal justice system for such a trial to take place.
- 7.8 The prosecution attended on the trial judge, HHJ Zucker QC, at the Wood Green Crown Court on a number of *ex parte* PII applications. In the course of the applications the judge sought an assurance from Counsel that the prosecution was not in possession of any material which suggested that HMCE were not only aware of, but had encouraged, the movement of the frauds or fraudsters from London City Bond to Fort Patrick. Instructions were sought and received: the assurance was given, both during the PII hearings and in open court with all parties present.

7.9 On the basis of that assurance HHJ Zucker QC took a robust view about the relevance of London City Bond to the trial of Operation Stockade. Submissions on behalf of Grant that there had been an abuse of process were dismissed as having “no merit whatsoever” and being “plainly spurious”. The application to stay the proceedings was refused. In the course of his ruling, given on 31<sup>st</sup> October 2000, the judge observed:

[Counsel] has placed before me this morning a number of documents relating to communications by a Customs officer with a Mr Allington who ran the London City Bond. He seeks to place upon these documents a construction which suggests impropriety on the part of Customs officers. I am by no means clear that those documents support such a contention. But, even if they did, they may have been germane to London City Bond; they have nothing to do with Fort Patrick.

7.10 Of the movement by traders of duty suspended goods from London City Bond to Fort Patrick the judge held:

...there is no evidence in any document that has been produced that Customs officers played any part in the movement of traders to Fort Patrick.

The prosecution assurance underpinning that part of the ruling made by HHJ Zucker QC was based upon a consideration of the materials supplied by Bernie Small.

7.11 The indictment had been severed so that Grant, Nash and Sweeney were tried separately from the remaining five defendants. The trial of the five hauliers and drivers began in January 2001. Gell, Smith, Challis, Jenkins and Johnston were all convicted. They were sentenced in February 2001 respectively to four years, two years three months, 18 months, 12 months and six months imprisonment.

7.12 The trial of Grant, Nash and Sweeney began on 30<sup>th</sup> May 2001. By now Alf Allington had given his statement to the solicitors for Mr Villiers and in any event was not a material witness for the prosecution. He was however called on behalf of Grant on 21<sup>st</sup> July 2001. Counsel for Grant sought to adduce evidence from Alf Allington suggesting that fraud was rife at London City Bond, that he as warehousekeeper knew all about it and had allowed it to continue with the consent of HMCE, and that despite that knowledge and participation he had not been prosecuted. The judge ruled that this was irrelevant to the issues in Operation Stockade and refused to allow the defence to lead the evidence.

7.13 On 9<sup>th</sup> August 2001 Grant was convicted and sentenced to a total of nine years imprisonment. Nash and Sweeney were acquitted. The convictions pre-dated the judgment of the Court of Appeal in *Villiers*.

- 7.14 Grant, Gell, Challis, Jenkins and Smith all appealed against their convictions by leave of the Single Judge on a number of grounds including those relating to abuse of process and the Allington allegations. At a Directions Hearing on 15<sup>th</sup> January 2002 the CACD (Tuckey LJ, Penry-Davy J and HHJ Fawcus) ruled that the prosecution should not be allowed to reopen the issue as to whether the Allingtons were participating informants in the London City Bond frauds. The court concluded that the findings made in the *Villiers* appeal should be binding upon the court hearing the appeals arising out of the trial of Operation Stockade.
- 7.15 The Attorney-General sought the leave of the CACD to refer the sentences of Gell, Smith, Challis, Johnston and Jenkins as being unduly lenient. The application was heard on 12<sup>th</sup> May 2002. The court granted leave and found that the sentences passed on Gell and Smith were unduly lenient. The court however decided that it was not necessary in all the circumstances to increase the sentences imposed.
- 7.16 The hearing of the appeal in Operation Stockade took place on 21<sup>st</sup> January 2003 (Longmore LJ, Sachs and Davis JJ). By then the proceedings in front of Mr Justice Grigson at Liverpool had concluded. In the course of those proceedings further material had emerged. Not only had there been inadequate disclosure of the inadequate records of an improperly described relationship, but also Bernie Small had admitted that he had misled prosecuting counsel and judges in cases in which PII applications had been made by failing to make clear the gaps in his informant records. Further, it was demonstrated during Bernie Small's evidence that the contact with Alf Allington and Ed Allington was substantially greater than had previously been disclosed and that there was no record of those contacts. The lack of records could not be remedied.
- 7.17 Of particular relevance to the Operation Stockade appeals were entries in Bernie Small's daybook which showed that he received information from the Allingtons as to movements of stock from London City Bond to the Fort Patrick bond. His evidence before Mr Justice Grigson further pointed to the passing of information from Bernie Small to a Customs officer investigating the Fort Patrick Bond, which was itself undocumented, and where the source of the information was either Alf or Ed Allington, again undocumented. That situation was contrary to the Crown's understanding of the position and to the assurance given to HHJ Zucker QC. Finally, Bernie Small had produced at the Liverpool hearing for the first time a document which described Operation Stockade as a London City Bond case.
- 7.18 In the light of those matters and the conclusions of the CACD in *Villiers* and *Early* the prosecution did not resist the appeals. The

prosecution acknowledged that all the appellants, including those who had pleaded guilty, were deprived of the ability to mount their best case on the issue of abuse of process as a result of non-disclosure by the Crown. The court adopted the submissions of the prosecution. It accepted that if the matters identified by the prosecution had emerged in the course of the abuse hearing before HHJ Zucker QC then the arguments on abuse would have been presented in a more forceful manner and might have led to a different result. Accordingly the appeals were allowed.

7.19 The prosecution did not invite the court to order any retrials. To meet any renewed application to stay the proceedings as an abuse, the prosecution would be compelled to rely upon the evidence of Bernie Small. The prosecution recognised that Bernie Small's position in the proceedings as an accurate witness who had effected full disclosure was simply untenable: his credibility was damaged beyond repair. The defects in disclosure were incapable of being satisfactorily remedied. The appeals were allowed, the convictions quashed and no retrials were ordered. The court described that outcome as "a very melancholy result" and "something which is greatly to be deplored."

7.20 On 23<sup>rd</sup> January 2003 the Economic Secretary to the Treasury made a statement to the House of Commons on the decision of the Court of Appeal in the Stockade case. He informed the House, with my knowledge and approval, that my Review was to extend to all issues arising out of the trial and appeal of Operation Stockade. In fact, the only issues which arise relate to the reliability of the witness Bernie Small, the defects in his informant records, and the management issues relating to those defects. Those issues are dealt with extensively elsewhere in this Review. Outwith those significant defects there was nothing to suggest that the convictions in Operation Stockade were in any way unsafe or contrary to the evidence. Accordingly no further separate consideration is necessary.

## **Other Proceedings**

### **Operation Create**

7.21 Operation Create was a diversion fraud in which a slightly different method of fraud was employed. Goods from London City Bond were shipped to genuine bonded warehouses in Holland. From there the goods were released to a bogus company and transported to another Dutch bonded warehouse in Dordrecht. The documents then show a final journey from Dordrecht to a bonded warehouse in Italy. The goods in fact never went to Italy but were diverted back into the UK and distributed on the domestic market here. The diversions allegedly took place in October and November 1998, after control of London City Bond had been returned to the Romford excise unit and after Bernie Small had ceased to be involved in monitoring activities at the Bond. There was compelling evidence that the four defendants

were all involved in the operation of the companies required to effect the fraud. They were to be tried in the Crown Court at Leicester.

7.22 The problems generated by the London City Bond cases had a serious and adverse impact on the case. The prosecution was not able to rely on any of the AADs recovered from London City Bond: without calling someone from London City Bond it was not possible to prove the provenance of the documents. The effect of the Liverpool proceedings excluded that possibility. It was not possible simply to excise the documents from the case: to do so would be seen as blatant manipulation of the evidence and might be an abuse of the process in itself. Further, although the diversions took place long after Bernie Small had ceased to be involved at London City Bond he did have some input into intelligence gathering at an early stage, in February 1998. The defence had raised Bernie Small's involvement and the prosecution was not able to call him to deal with the points raised.

7.23 It was in those circumstances that prosecuting counsel advised that the case should be abandoned "with no enthusiasm". The matters identified above had created problems in continuing the prosecution which impacted so adversely on the prospects of conviction that it was not feasible to continue. The advice was accepted.

### **Operation Fade**

7.24 Operation Fade was another massive diversion fraud with a loss of duty in excess of £30 million. It began as an investigation into the inward diversion of excise goods which had been consigned to a number of UK bonded warehouses, including London City Bond. The goods were not received by the Bonds and were diverted onto the home market. As the investigation progressed evidence was obtained of outward diversion of excise goods from London City Bond before March 1998. After an investigation lasting some months nine defendants were arrested. Three were said to be organisers of the fraud, two were alleged to be involved in warehousing the diverted goods, one was responsible for organising the transportation of the goods and three defendants were said to be knowingly involved as hauliers.

7.25 One of the defendants, said to be a principal in the fraud, was in Spain when the other defendants were arrested. It was decided that the trial of the eight remaining defendants should be heard without him before HHJ Binning at Kingston Crown Court in September 2000. The defence were well aware of the difficulties and problems associated with London City Bond and indicated to the prosecution at an early stage that they proposed to apply to stay the proceedings as an abuse of process. As the date of the trial approached it became apparent that Alf Allington was unlikely to be prepared to give evidence and in any event the Roques Review (see Chapter Nine)

and that being conducted by the National Audit Office into HM Customs and Excise were likely to generate additional discloseable material which might further complicate the position so far as London City Bond was concerned.

- 7.26 In those circumstances the prosecution decided to abandon any allegations involving London City Bond and proceed on the basis of the inward diversions only. The prosecution wished to amend the indictment to reflect that decision. However, the trial Judge ruled that all issues of disclosure and abuse of process arguments should be dealt with on the basis of the original indictment before the application to amend was determined.
- 7.27 In the light of that ruling a PII application took place in the course of which the Judge was shown all the sensitive material then available to the prosecution in relation to Alf and Ed Allington. The Judge was informed that Alf Allington was an unregistered informant, and possibly told that he was an unregistered participating informant. (The transcripts of the PII hearing have never been obtained.) The judge ruled that none of the sensitive material was discloseable in the circumstances of the case he was trying. However, a number of further issues arose, including an interview of Alf Allington with HMCE Internal Investigations Division which took place in mid-October 2000. The transcript of that interview was shown to the Judge. He took the view that he could not say the transcript was not relevant to any abuse argument, although in his view such an argument was unlikely to succeed. He therefore ordered disclosure of the transcript. To do so would inevitably have disclosed that Alf Allington was an informant.
- 7.28 In the course of his interview with the Internal Investigations Division Alf Allington had disclosed that he had given a statement to the solicitors representing Mr Villiers on his appeal. However, the contents of that statement were not at that stage known to HMCE and, in particular, they did not know whether Alf Allington had revealed himself as an informant. HMCE took the view that in the absence of such knowledge they still owed to Alf Allington a duty of confidentiality which it was not theirs to breach. The prosecution applied for an adjournment in order to clarify the content of Alf Allington's statement. However that application was refused. Without clarification of the situation the prosecution were not prepared to disclose the transcript as ordered by the Judge, since to do so would be to reveal that Alf Allington was an informant. They accordingly offered no evidence against the eight defendants then before the Court on 27<sup>th</sup> October 2000.
- 7.29 In the meantime the defendant in Spain had been arrested and was contesting extradition. When the prosecution offered no evidence in October 2000 it was decided that extradition could no longer be pursued. That defendant returned to the UK voluntarily at the end

of December 2000. By February 2001, after the statements made by Alf and Ed Allington had been made public it was thought that all disclosure issues in relation to the Allingtons had been resolved. The ninth defendant was therefore rearrested and charged with offences relating to inward diversion fraud. However, subsequently an issue unrelated to London City Bond arose which later resulted in the Crown offering no evidence against him. Accordingly no defendant ever stood trial in relation to this diversion fraud.

### **Operation Stack**

- 7.30 This was a Scottish case of diversion fraud, the diverted goods coming from London City Bond. It was, in comparison to other investigations, a modest affair, with a loss of excise duty estimated at £500,000. The investigation began in December 1997 and ultimately four men were charged with offences arising out of the investigation, three allegedly principals in the fraud and one a driver.
- 7.31 The trial of the four defendants was due to be heard in Glasgow in March 2001. There were a number of adjournments and an unsuccessful application by the defence to stay the proceedings on the ground of delay. By the summer of 2002 the London City Bond issues which had been considered in the English courts were being raised by the defence. There was a further adjournment for the parties to examine the material disclosed in connection with the Liverpool abuse applications.
- 7.32 Following the collapse of the Liverpool proceedings and after consultation with HMCE solicitors, the Procurator Fiscal decided that it would be very difficult to exclude the possibility of a connection between the trial of Operation Stack and the English cases. The Crown accordingly did not resist an application by the defence that the proceedings should be discontinued. On 28<sup>th</sup> November 2002 the defence application was granted and no trial took place.