

**Legal professionals
welcome HSBC win
in latest round of
landmark SARs
anonymity battle**

Article by Martin Coyle - Philip Rubens comments

Legal professionals have endorsed HSBC Private Bank's victory against a \$300 million claim from a wealthy individual which, had it lost, could have forced banks to disclose the reasons for filing suspicious activity reports (SARs).

The Court of Appeal decision has reaffirmed an earlier judgment which ruled that the bank should not have to disclose the names of employees who reported suspicions about multi-million pound bank transfers involving the client to the Serious Organised Crime Agency (SOCA). Lawyers said the decision was sensible, and a boost both for banks and those staff who had to report SARs.

The ruling is the latest stage in a long-running case which dates back to September 2006, when the Court of Appeal struck out an appeal by Jayesh Shah and his wife Shaleetha Mahabeer that the bank should reveal the identities of bank staff involved in blocking a series of bank transfers totalling more than \$38 million. The judgment has confirmed an earlier High Court decision which ruled that bank employees should be covered by public interest immunity, adding that it was "entirely appropriate" for the bank to protect the identities of its employees.

Lord Justice Lewison said in this latest judgment: "The more I listened to the explanation of why the claimants wanted the names, the more convinced I became that, to use the familiar cliché, this was a fishing expedition."

Jonathan Fisher QC, a barrister at Devereux Chambers, said that the decision was sensible and a fillip for the bank. He said that it was always likely that public interest would "trump" any request to disclose employee names.

A sense of relief

Fisher told Thomson Reuters: "The courts and the government authorities must bend over backwards to preserve anonymity. The reality is that reporters are being compelled by the state to act as unpaid covert informants, and if you are an unpaid covert informant the least the state could do or the courts could do is protect and preserve your anonymity. If this is the deal the government has cut with us then that has got to be right."

Philip Rubens, a partner at Finers Stephens Innocent, said that banks were likely to be "relieved" by the decision. He said that Shah had been unable to demonstrate that any individual at the bank had acted maliciously towards him in blocking his funds. The ruling seemed to demonstrate that as long as doubt could not be cast on the "genuineness" of an employee's suspicion then an individual's identity was unlikely to be disclosed.

Rubens told Thomson Reuters: "It is only in circumstances, I see, where a claimant is in a situation where he can demonstrate that the suspicions were not in any event justified that the individual's identity will then have to be disclosed."

He added that the decision was a "setback" for Shah and said that in future claimants would have to prove that an employee had acted "maliciously" in blocking a client's funds. "Without that knowledge they are going to have very great difficulty in getting information about particular individuals within the bank structure who may have been party to the decision-making process," he explained.

Brian Dille, a partner at KPMG largely agreed and said it was a welcome verdict for banks: "It protects the identity of those reporting SARs where there is no suggestion of bad faith on the reporter's part. However, the question of whether public interest immunity can be applied where there is an allegation of bad faith has been parked, so the judgement only partially answers the question. There is still a risk that the reporter could be identified when there is an arguable case that the initial report was made in bad faith but, for the majority of reporters, this is a small risk," he told Thomson Reuters.

The case has been centred on HSBC Private Bank's decision to block four separate bank transfers between September 2006 and February 2007, and to file SARs on account holder Shah when he attempted to transfer his money to other accounts. The bank suspected that Shah was laundering money and delayed the transactions while it awaited notification from the Serious Organised Crime Agency. The freezing of his money in one particular transaction led the Reserve Bank of Zimbabwe also to freeze Shah's cash which, according to Shah, meant he lost substantial interest on his Zimbabwe money.

SOCA subsequently gave HSBC permission to carry out the transaction, ruling that it was bona fide. The claim was initially struck out in January 2009, but the pair were later given leave to continue their case following an appeal last year.

In a witness statement disclosed at an earlier court hearing Michael Wigley, a manager in the bank's anti-money laundering department whose name was disclosed, said that the bank's money laundering reporting officer (MLRO) considered each and every SAR. Wigley, who was responsible for filing SARs to SOCA, said his team looked at all internal reports in order to weigh up their validity. "We would need to have our own independent suspicion based on the factual information known to us before submitting a SAR to SOCA," he said.

Daren Allen, a partner at Berwin Leighton Paisner who is defending the bank, welcomed the ruling. "It's a very good decision for banks and bank staff who report suspicions," he told Thomson Reuters.

Edwards Wildman Palmer, the law firm, which is representing Shah and Mahabeer, declined to comment.

The case is expected to be heard in December.



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Philip has a track record in a wide variety of substantial commercial disputes (both litigation and arbitration) and is particularly known for his financial services expertise since undertaking a secondment in the enforcement division at the Financial Services Authority (FSA). Philip now also has a niche financial services practice advising brokers, hedge fund managers and investment bankers in relation to enforcement proceedings brought by FSA or foreign regulators as well as claims resulting from the credit crunch.