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Help! The bank has frozen my account!

Collateral damage from money-laundering legislation

I have seen this more than once: a client rings in a panic, having had his business bank account frozen by the bank. His bank won't tell him why. They are suddenly completely uncooperative, and he is naturally livid. He wants to know how to get the account unfrozen, and if necessary to take immediate legal action. What should you do if it happens to you?

The reason is almost always that the bank has formed a suspicion that the account or the customer is involved in money-laundering (or terrorist financing). Once it forms that suspicion, the bank is obliged by law to block transactions; otherwise it risks committing an offence of converting or transferring criminal property under the [Proceeds of Crime Act 2002](#) or facilitating the retention or control of terrorist property under the [Terrorism Act 2000](#).¹ It also has to make a report to the Serious Organised Crime Agency (SOCA) explaining its suspicions.

You may be an entirely innocent party. The suspicion could relate to an investor, employee, customer or supplier. The concept of "proceeds of crime" is extremely wide, and can include, for instance, the benefit of tax evasion, or business cost savings arising from minor offences.

Suspicious can be triggered by the bank's internal systems, far away from your relationship manager. All banks now operate back-office systems for flagging up and reporting unusual transactions. Your manager might know why something has happened, but it may still look suspicious to someone – or a computer – in head office.

¹ It could also be that it has not completed its client due diligence under the [Money Laundering Regulations 2007](#) or its ongoing monitoring has noticed a problem with it, which can oblige it to block bank account transactions under [Regulation 11](#).

What is more, the bank is prevented from telling you why it has done what it has done: it is an [offence to “tip off”](#) a person if that could prejudice an investigation following the report. The only way to avoid lying to you is for the bank to say nothing at all, so it just clams up. Of course this can be a nonsense: any criminal or terrorist, and most well-informed people, will know that if a bank or professional adviser suddenly refuses to act on instructions and won't tell you why, it is probably because they have made a money-laundering report.

SOCA can give consent to allow transactions to proceed, or if it doesn't respond within seven working days, the freeze ends. But if SOCA refuses consent, the freeze is extended until 31 days from the date of refusal of consent. In that case, SOCA will usually have notified the police or other enforcement agencies. If they want further time to investigate, they will have to make an application to court.

The courts have consistently supported banks when they have relied on their duties under the money-laundering legislation, even if the customer is entirely innocent.² So the customer usually has no remedy, even if his business is left in ruins. A [Mr Shah](#) has been claiming losses of \$330 million from HSBC which he alleges flowed from their blocking of transfers from his account.

To be protected, the bank just has to satisfy the court that it had a suspicion. The suspicion does not even have to be reasonable: if the bank has a suspicion, it must report and it must stop the transaction. The court has said that the bank must “think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts' or even based on 'reasonable grounds'.”³

Mr Shah tried a variety of different attacks on the bank's position. He said that the bank's suspicion was irrational; negligently self-induced; mistaken; and/or automatically generated by computer. He said that the bank was negligent, or breached its duty to give him relevant information about his affairs. The Court of Appeal dismissed all these claims apart from the last. It allowed the claim to go forward only in case Mr Shah could prove that the bank did not in fact have a suspicion at all; or he could prove loss from the bank's failure to tell him what was going on, at a time when it was not protected by the “tipping off” requirement – perhaps because the investigation had ended. In a second visit to the Court of Appeal, the court even refused to order the bank to tell Mr Shah which employees had the suspicions and made the reports, on grounds that it was not relevant; public interest immunity could also apply.⁴ Mr Shah's lawyers made a third unsuccessful visit to the Court of Appeal⁵ before the remains of his case came on for trial in December 2011. The trial is still going on, with a decision not expected for several months, but the legal principles are clear.

² [K v National Westminster Bank; R \(UMBS Online Limited\) v SOCA; Shah v HSBC Private Bank \[2010\]](#)

³ [R v Da Silva](#)

⁴ [Shah v HSBC Private Bank \(UK\) Ltd \[Oct 2011\]](#)

⁵ [Shah v HSBC Private Bank \(UK\) Ltd \[Nov 2011\]](#)

So what advice do I have for the innocent bank customer, without the resources of Mr Shah, to fund costs? Each case depends on its facts, but early litigation is not likely to be successful. In the short term, the best answer is usually to work with the bank to allay the suspicion and get the freezing lifted. If the client thinks he knows what has caused the suspicion, give the bank the evidence. Ask them to seek the permission of SOCA to proceed with the transaction, as a matter of urgency. Whilst pointing out the possibility of a claim may focus their minds and make them review their decisions, it is unlikely that there will be a successful claim if there is a genuine suspicion. Bank customers should perhaps be alive to these issues beforehand and try to head them off, for example by giving the bank an explanation in advance of transactions that may look suspicious. As Mr Shah is finding out, the cards are heavily stacked against the customer.

Remember, too, that the same rules apply to your accountant and (with some exceptions) your solicitor.

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