

Transnational investigations in practice – an overview of some of the resources available to prosecutors in England and Wales

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International investigations

1. How international investigations arise?

2. How The UK reacts?

3. CPS and international issues

4. CPS and police interaction

5. Foreign convictions

6. Operation Singapore

1. How international investigations arise?

- **Jurisdiction**
- **Cross-border offences**
- **Extra-territorial offences**
- **Domestic offences**

Jurisdiction

- (1) Our criminal jurisdiction is territorial, as the function of the courts is to keep the Queen's peace within her realm; therefore, courts have jurisdiction only for conduct occurring here
- (2) Follows that if statute is silent on the issue, it means jurisdiction for that offence does not extend outside the UK

Exceptions –

- Courts' interpretation has evolved as to when an offence 'occurs' here, and statute often is not silent on jurisdiction (and the nationality of suspects and witnesses creates an international element)

Effect of case-law and statute –

- Jurisdiction is more far reaching than many think, and even purely domestic cases can have an international element.

Examples -

- Cross-border offences, where some of the criminal conduct occurred abroad
- Extra-territorial offences, where all of the criminal conduct occurred abroad
- Domestic offences, where none of the criminal conduct occurred abroad but where there is evidence abroad

Cross-border offences

Examples –

- Case-law: ‘... a substantial measure of the activities constituting a crime takes place within the jurisdiction’, R. v. Smith (Wallace Duncan) (No.4) [2004] 3 W.L.R.; therefore, re. obtaining by deception, it didn’t matter that only the deception was in E/W whilst the obtaining was abroad
- Statute: e.g. CJA 1993 as amended by Fraud Act 2006, re. theft, false accounting, blackmail, HSG, fraud etcetera where a ‘relevant event’ occurs in England / Wales; improper importation of goods, CEMA 1979, drug trafficking

Extra-territorial offences

Examples –

- Sexual offences against children, Sexual Offences Act 2003
- Homicide by a British national, Offences Against the Person Act 1861, s9
- Ships at sea, Merchant Shipping Act 1995

Domestic offences

Examples –

- Witness has gone abroad; statements, television link at trial
- Suspect, victim or witness is a foreign national; need to obtain foreign convictions, Coroners and Justice Act 2009, Schedule 17
- Proceeds of crime are abroad; need to enforce restraint or confiscation order

2. How The UK reacts?

Organisations

- Specialist units within existing organisations, and guidance; Int'l Division in CPS, LION, UKCA in Home Office, ILOs in police, SOCA Multinational, NPIA)
- New organisations, often international in scope – Eurojust, EJM, Int'l Association of Prosecutors, Iberred, Commonwealth Secretariat, Europol, Interpol, CEPOL

Instruments

- EU measures, multi and bilateral conventions and treaties, memoranda of understanding

3. CPS and international issues

- **International Division**
- **Special Crime and Counter Terrorism Division's Extradition Unit**
- **Prosecutors abroad**
- **Expertise within units**

International Division

- MLA and extradition – online guidance and contact point for queries
- MLA forum
- Co-ordinates all travel overseas, and
- Inward visits –include Africa (Nigeria, Tanzania), Asia and the East (Afghanistan, China, Hong Kong, Japan, Singapore, South Korea, Vietnam), Europe (numerous), Middle East (Iraq, Qatar), Australia, Israel
- Capacity building, liaison magistrates, ‘legislation’, DPP briefings

SCCTD' s Extradition Unit

- Extradition Act 2003
- Category 1 and 2 Territories
- EU and the Rest of the World
- Drafting import extradition requests to non category 1 territories on behalf of CPS Areas, and
- Act for all foreign states on export extradition
- Will prepare cases on your behalf
- Instruct a lawyer to appear on your behalf
- Adversarial process
- Relationship with Foreign states
- (Prosecutors nationwide responsible for EAW imports)

Extradition (continued)

- Growth in Extradition work
- Pre Extradition Act – approximately 200 cases a year
- 2012 – over 1,800
- Approximately 40% of requests come from Poland
- Some points of contact: nick.vamos@cps.gsi.gov.uk

Paul.close@cps.gsi.gov.uk

Michael.omo@cps.gsi.gov.uk

Tina.whybrow@cps.gsi.gov.uk

Prosecutors abroad

Short term posts – up to 3 years

- Funding usually from 3rd parties
- Drugs: Sierra Leone, Ghana, Eastern Caribbean
- Piracy: Kenya (Navy), Seychelles
- Witness protection and care: Philippines
- Terrorism / drugs: Afghanistan (FCO)
- War crimes: former Yugoslavia

Permanent posts –

- Liaison magistrates: France, Italy, Spain, USA, Pakistan
- Eurojust: the Netherlands

Expertise within units

- Central divisions have prosecutors with extensive experience
 - Counter Terrorism Division, Organised Crime Division, Central Fraud Group; Welfare, Rural and Health, also Complex Casework Units
- European policy unit in Strategy and Policy Division
- Ad-hoc visits, guidance, conferences
- Visit by Albanian prosecutors to Proceeds of Crime Unit
March 2013

4. CPS and investigator interaction

General rule is “the sooner the better”

- Be aware of referral guidelines for different CPS units

CPS online guidance, role of prosecutors includes –

- ‘Advising the investigator about MLA issues that arise. Case planning and strategy are of particular importance when evidence may be in another country as such evidence ...
- ‘... considering the best method of obtaining overseas evidence. Prosecutors must be proactive in this regard and consider making direct contact with foreign counterparts (prosecutors and investigative judges) to discuss how evidence may be obtained.
- ‘Meeting with officers to discuss how evidence may be obtained, including by non-MLA methods and to discuss the issue and contents of a letter of request.’

Mutual legal assistance

- Prosecutors draft both ‘letters of request’ (pursuant to CICA 2003) and ‘requests for restraint and confiscation’ (usually POCA related)
- Often reliant on police information
- Police should not draft the request; doing so just creates an unnecessary burden
- A letter of request asks the other state to undertake enquiries to obtain evidence; it is not a request for UK officers to travel and to conduct enquires
- CPS must always be told of prior contact with the requested state and full contact details

Extradition

- Prosecutors nationally draft EAWs; issued by a judicial authority (usually a district judge)
- Only SCD's Extradition Unit drafts requests to non-EU states; submitted to Home Office for request by Secretary of State
- As with MLA, prosecutors rely on police information

Who are they?

- Since 2010 the ability to obtain previous convictions from abroad
- Helps authorities know who they are dealing with
- ‘bad character’ evidence can support a prosecution



- Left: ‘Larceny convictions. Destructive, vicious. Fanciful high notions. Delusional exaltations.’
- Right: ‘Violence convictions for assault. The back of the head ought to have been photographed, but judging by the width, there should be a large Cerebellum. Low-minded, sullen, obstinate, violent, threatening. Delusional exaltations.’

PORTRAITS.

Groups I, II, III and IV, V, VI, respectively illustrate a type of features common among men convicted of crimes of violence.



I



II



III



IV



V



VI



Medicines and Healthcare products Regulatory Agency

- We enhance and safeguard the health of the public by ensuring that medicines and medical devices work and are acceptably safe.

Operation Singapore

- Between February and May 2007 the following counterfeit medicines were imported and placed on the United Kingdom market:
 - 10,000 counterfeit packs of CASODEX
 - 41,373 counterfeit packs of PLAVIX
 - 15,838 counterfeit packs of ZYPREXA

- All three counterfeit products were subject to “Class 1 recall” by the MHRA.
A “Class 1 recall” in the UK is the highest form of alert as it involves products that pose the greatest risk to the public. The recall involves tracing products to patient level.

- Analysis of the drugs showed that the counterfeit medicines did not contain the correct active ingredients. 32,000 counterfeit packs are believed to have been prescribed to patients with 7,000 of those being returned through the recall.
- Zyprexa £80.00 per pack in the UK
- Casodex £80.00
- Plavix for £40.00.
- Proceeds of the crime - £7million

- Evidence and intelligence showed that the drugs were manufactured in the Republic of China and made their way to Singapore where they were then air freighted to Belgium before being brought by surface vehicles to the United Kingdom.
- Once in the United Kingdom the packaging was altered by **G** at a company controlled by him, **CMS Ltd**, before being sold by him into the legitimate supply chain

- The documentary evidence purported to show that the drugs were obtained from a Mauritian company “**Multiscope Trading**, by a Luxembourg-based company **KIRCHBERG HANDELS GmbH**
- Prosecution showed G controlled that company - which, in turn, sold to separate intermediaries in the UK. Kirchberg Handles was previously called **PRIMAPHARMA SARL**.

- Kirchberg Handels GmbH is not licensed by the Luxembourg Ministry of Health to deal in medicines.
- EU directives are clear that a purchaser from another EU Member country [which is governed by the laws of their own licensing country] could not properly purchase from an unlicensed wholesaler such as Kirchberg Handels GmbH.
- However Kirchberg Handels GMBH was able to trick and sell their counterfeit medicines on to other European pharmaceutical companies by producing a letter from the Luxemburg authorities stating that a whole sale dealers licence would not be required if the medicinal product was not destined for the Luxemburg market.

- All the medicines purported - by their appearance, use of names and packaging - to be products for which trademarks are held by others.
- The holders of the trademarks did not authorise the use of their marks on these products.
- The products were intended to deceive purchasers and consumers and prejudice the legitimate rights of the trademark holders.

- G was convicted on 8th April 2011 of 8 offences including Conspiracy to Defraud; Selling or distributing counterfeit goods contrary to section 92 (1) (b) of the Trade Marks Act 1994 and Conspiracy to launder money contrary to sections 327 and 329 of the Proceeds of Crime Act 2002.
- He is currently serving an eight year sentence. These are offences to the Proceeds of Crime Act 2002 applies.

Other persons are also suspected of involvement

- Kevin X: He was suspected of being the manufacturer in China.
- Following joint investigations and co operation between drug enforcement agencies in the US and the MHRA he was tried in the US and convicted of supplying counterfeit medicines.
- He is currently serving 6 ½ year imprisonment (sentenced 26/09/2008) in the USA

- B and A: – father and son – appear to be next in the supply chain after X and responsible for the brokering of the deals with Gillespie and others.
- On the basis of intelligence and evidence supplied by the MHRA and obtained by the French authorities through Letters of Request A was arrested in Spain in October 2012.
- He is currently subject to extradition proceedings to France and will also be interviewed by officers from the MHRA in April 2013

- At least 9 companies were involved ranging from those based in Dubai, Cyprus, Luxembourg, Spain, Tunisia to Ivory Coast in Africa.
- The case on which G was convicted was a thorough and extensive international investigation which eventually revealed that he was controlling Kirchberg Handels and that he had dishonestly sought to change the identity of the company's beneficial owner after his arrest and with retrospective effect

Confiscation Proceedings

- Confiscation proceedings are ongoing against G under section 6 of the Proceeds of Crime Act 2002
- Prosecution is seeking to obtain a Confiscation Order for **£4,730,964.25**, and believes that G has deliberately sought to hide the proceeds of his criminal activities which he used to purchase property in France and to fund a lavish lifestyle.
- A final hearing is set to take place on the 2nd April 2013.
- The confiscation proceedings alone required Letters of Request to France, Luxembourg, Mauritius and Switzerland.