

## **"Nigerian Advance Fee Fraud"**

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### **Introduction**

Throughout history enterprising, if unscrupulous individuals, have devised new ways of tricking gullible people into parting with their money. Without in any way impugning the integrity and honesty of the vast majority of Nigerians, this paper examines one of the most recent examples of deceptive conduct which has emerged internationally and carried out on a wide scale by a group of primarily Nigerian nationals. It involves a variant of the traditional 'advance fee' scheme and has been used to defraud anyone in the world who is willing to succumb to the temptation offered to make some 'quick money'. It has been estimated that some US\$5 billion has been stolen worldwide by these schemes over the past decade.

This paper examines the nature of this phenomenon and investigates the way in which it has escalated not only in terms of its frequency, but also with respect to the seriousness and nature of the criminality involved. It also examines the reasons behind its development and how traditional law enforcement measures have been of limited effectiveness in controlling it. In the end, one can only wonder at the greed and stupidity of people prepared to part with money in response to an unsolicited letter from a stranger on the other side of the world offering them millions of dollars.

The gist of so-called 'advance fee frauds' is to trick prospective victims into parting with funds by persuading them that they will receive a substantial benefit in return for providing some modest payment in advance. The characteristics of this type of fraudulent scheme usually entail enlisting the services of the prospective victim to assist in an activity of questionable legality, thus providing some assurance that the victim would be unlikely to report the matter to the police, once defrauded. The victim would, rightly, be apprehensive that he or she had aided and abetted some criminal activity and would also be reluctant to make public the fact of his or her gullibility, particularly if adverse media coverage were a possibility. Thus, the offender is able to carry out the scheme repeatedly, sometimes in respect of the same victim, whilst police are faced with difficulties in finding witnesses and securing evidence.

In recent times, one particularly endemic form of advance fee fraud has involved a group of expatriate Nigerians who are believed to operate from cells in the United States, Britain, Canada, Hong Kong, Japan and other African countries with the assistance of confederates within West Africa (Gup 1995: 120-5). The term, 'Nigerian Advance Fee Fraud' is, therefore, only partially accurate and the problem is truly one of international dimensions with victims and offenders being located across the globe.

Part of the reason why the deceit has been successful lies in the social and political circumstances which have existed in Nigeria thus providing fraudsters with a plausible context in which to conceal their true activities when approaching prospective victims.

## **The Social and Political Background of Nigeria**

Nigeria is a federation of thirty states governed by a newly elected civilian President. It is the most populous of the African countries with approximately 125 million people, and covers some 925,000 square kilometers. Lagos is the economic centre of the country and was its capital city until 1991 when a new capital was created at Abuja located in the centre of the country.

Nigeria became a British colony in 1861 following the abolition of the slave trade in 1833. In 1900, the British government took over direct administration from the Royal Niger Company Chartered and Limited and retained its existing legal system. In October 1960, Nigeria became an independent country and has been ruled since then by a series of military dictatorships interspersed with short periods of democracy. In 1993, General Sani Abacha became Head of State after democratic elections were declared invalid, allegedly following massive electoral fraud. The person who claimed to be the democratically elected President, Mashood Abiola, a multi-millionaire businessman, was arrested for treason and imprisoned in 1994. He died of a heart attack in prison early in July 1998, following the death of General Abacha, also of a heart attack, on 8 June 1998.

On 27 February 1999, Nigeria held its first democratic elections in fifteen years and a civilian, Olusegun Obasanjo, who had formerly been a general and head of state in Nigeria, became President-elect, and took office on 30 May 1999. In 1983, he had relinquished power after having engineered democratic elections and the handover to civilian government. Now, as head of the People's Democratic Party, he hopes to end much of the corruption of the previous military regimes which held power for twenty-nine of the thirty-eight years since independence (Robinson 1999).

During General Sani Abacha's regime, billions of dollars were taken from the national treasury. The family of General Abacha have recently handed back \$750 million worth of currencies taken from state funds which have since been deposited in the Central Bank of Nigeria (*Times (London)* 1998).

An indication of the extent to which Nigeria is perceived as being corrupt is given in the Corruption Perception Index published by Transparency International on 22 September 1998. The Index for Nigeria is 1.9 on a scale of 1 to 10 in which 1 represents the highest level of perceived corruption. By way of comparison, Canada has an Index of 9.2 and Australia has an Index of 8.7 - Malta was not included in the survey in 1998 (Transparency International 1998).

Nigeria has vast deposits of oil, natural gas, coal and iron ore and its main source of export income is petroleum products. When world oil prices declined in the mid 1980s, the wealth of the country suffered considerably. This, coupled with the activities of an increasingly corrupt elite, led to a general decline in standards of living. In order to raise funds, some Nigerians began devising various fraudulent schemes, often with the assistance of expatriate nationals in the United States and other developed countries. The political and social circumstances which had taken place, created a scenario in which unsuspecting individuals could be persuaded that funds located in Nigeria needed to be moved to Western countries in order to prevent them from being either confiscated or devalued.

## **The Nature and Extent of the Problem**

The frauds which have been discovered to date have taken a variety of forms. All have entailed victims being approached by letter, or recently, electronic mail, without prior contact. Victims' addresses are

obtained from telephone and e:mail directories, business journals, magazines or newspapers and letters are invariably handwritten, often with counterfeit postage stamps being used, resulting in their being seized by postal authorities. They generally describe the need to move funds out of Nigeria and seek the assistance of the victim in providing bank account details in an overseas country and administration fees needed to facilitate the transaction. The victim is offered a commission, which could be up to forty per cent of the capital involved. Capital sums of between US\$20 to \$40 million are often mentioned thus creating a potential reward for the victim of up to US\$16 million. An advance payment which could total up to US\$50,000 is usually required which represents the amount stolen.

The mechanics of the schemes extend from the barely plausible to the unlikely, but all have met with varying degrees of success.

One scheme involves victims being informed of the existence of case loads of banknotes which are said to have been coated with a black mixture of Vaseline and iodine in order to disguise their identity from the authorities. The alleged money is shown to the victim who is told that the black coating can be removed by washing it with a special compound. In fact, only a few sample real US\$100 bank notes which have been blackened are shown to the victim and the special chemical is in fact ordinary cleaning fluid. The remainder of the paper in the case is blank, blackened paper. The victim is asked to provide between US\$50,000 and US\$100,000 for bulk supplies of the cleaning compound which the offender offers to provide. After the advance payment has been received, the chemicals are not delivered to the victim who is left with suitcases full of worthless black paper instead of the US\$100 notes. One Japanese businessman is said to have lost US\$5 million in this way (United States Secret Service 1997).

Letters have also been sent to victims indicating that millions of dollars have been left to them in deceased estates and inviting them to claim the money. Such letters are often accompanied by fraudulent wills of deceased foreigners and are sent to their relatives from bogus firms of solicitors. Victims are required to pay certain fees in advance of receiving their bequests, which, of course, do not exist.

Another scheme involves victims being given apparently legitimate documents emanating from sources such as the Nigerian government, the Nigerian National Petroleum Company, the Central Bank of Nigeria, or Nigerian solicitors indicating that sums of money need to be moved out of Nigeria in order to prevent confiscation. Victims are asked to provide bank account details as a ruse to support the legitimacy of the transaction. Over time, the victims are then asked to provide sums of money in order to facilitate the transaction, such as for government taxes, processing fees, audit fees, insurance, or bribes for officials. Occasionally victims will continue to provide money for years in the expectation of receiving a windfall which never arrives.

Some schemes entail victims receiving correspondence which purports to represent some contractual arrangement with Nigerian government officials or businessmen, usually offering substantial gains for little investment. The transactions may involve the recovery of contractual funds, crude oil shipments, or over-invoiced payments all of which are non-existent. In order to facilitate arrangements, victims are asked to supply bank account details and later money to pay legal fees, taxes, bank transfer fees or bribes.

The United States Secret Service estimates that since 1989, US\$5 billion has been stolen from victims throughout the world including Australia. Between August and November 1998, Australia Post, in

Sydney alone, confiscated 4.5 tonnes of advance fee correspondence which had counterfeit postage, amounting approximately to 1.8 million items (Holmes and Kaufmann 1998).

The Australian Federal Police coordinate investigations into advance fee fraud although few prosecutions have taken place. Over a two year period, some 250,000 advance fee letters were collected by the Australian Federal Police. Early in July 1998, Australian Customs intercepted a courier package sent from Nigeria which contained 302 advance fee letters which were to be posted in Australia to destinations in New Zealand, the Pacific Islands and the South East Asian region. In March 1998, Hong Kong police arrested fifty four persons and seized 13,350 advance fee letters.

## **Escalation of the Problem**

Over time, simple advance fee frauds have become increasingly more complex and on a number of occasions events have escalated into acts of physical violence, kidnapping and extortion. This occurs when victims are persuaded to travel to Nigeria to undertake further steps to complete the transaction in question, or where victims who have been defrauded have travelled to Nigeria to confront offenders in an attempt to have their money returned. Sometimes victims have been given forged visas making their stay in the country illegal, thus making them open to further acts of extortion (Gup 1995: 123-4). Victims found in possession of advance fee documents in Nigeria may also be in breach of local laws.

Often, victims who refuse to continue to pay advance fees have been subjected to acts of intimidation and threats of violence unless they cooperate. One threatening letter, faxed to a victim in November 1994, purported to come from a subsidiary of 'International Assassins and World Security Organisations' which stated:

We have received a Fax message our World Headquarters New York this morning to inform you to produce a mandatory sum of US\$35,000.00 only, into our account given below in Switzerland within ninety six hours, alternatively you will be kidnapped and forced to commit suicide during the period of our on-coming anniversary of fifty years (sic)

(sighted 8 April 1999 at:

<http://home.rica.net/alphae/419coal/Extortionsamples.htm>).

Most recently, victims have been threatened with violence unless they cooperate from the start. If they have travelled to Nigeria they have been held hostage until a ransom is paid. Since 1992, seventeen people have been killed in Nigeria attempting to recover their funds and the U. S. State Department has documented over 100 cases in which American citizens have been rescued from Nigeria. One United States investor who went to Nigeria to recover his money was found dead on the steps of a hotel after having been set on fire (*Canberra Times* 1995).

There is also evidence of repeat victimisation. Some victims who have been defrauded receive correspondence months later ostensibly from the Nigerian authorities advising that their funds have been recovered. Again, they are requested to send further funds to enable the so-called recovered funds to be released, thus resulting in further loss.

Those involved in perpetrating these acts appear also to be involved in other criminal activities such as credit card fraud, false identity fraud, forgery and immigration fraud involving counterfeit passports and visas. The criminals involved also seem to have connections with other organised crime groups including international drug traffickers (Gup 1995: 120-5).

Funds illegally obtained in advance fee schemes have also been used in money laundering operations carried out in conjunction with drug trafficking operations. In one case undertaken by the United States Secret Service in 1997, a Nigerian national residing in New Jersey was convicted of receiving the proceeds of advance fee fraud and laundering the funds through the purchase of luxury automobiles which were to be exported to one of the largest automobile distributors in Lagos (sighted 8 April 1999 at: <http://www.ncjrs.org/htm/ss.htm>).

Another way in which the problem has escalated very recently involves victims carrying out fraudulent activities themselves in order to obtain further funds to be sent to Nigeria. One Sydney victim of an advance fee fraud allegedly defrauded Australian investors of A\$700,000 himself in order to transfer money to Nigeria in the hope of recovering funds which he had already lost. He made use of the same kind of advance fee schemes which had previously been used to defraud him. On 18 March 1999, he pleaded guilty to ten counts of obtaining a benefit by deception at Penrith Local Court (Power 1999). Another case concerned an Adelaide businessman who defrauded local Australian investors of more than A\$2.3 million in order to send funds to Nigeria. On 25 March 1999, at Adelaide Magistrates' Court, he pleaded guilty to eight counts of false pretences and was sentenced to six years' imprisonment with a non-parole period of two years (Owen-Brown 1999).

## **Regulatory and Preventive Action**

As with other forms of transnational organised crime advance fee fraud is difficult both to detect and to prosecute. Offenders have used various strategies to thwart official investigations and victims are often reluctant to cooperate with police owing to their belief that they are implicated in a criminal conspiracy and could be prosecuted either in their own country or in Nigeria. Victims are also reluctant to cooperate with police through fear of reprisals being directed against them by the organised criminals involved.

Difficult legal jurisdictional questions also arise in determining where the offence has been committed and in which country a prosecution should be taken. Many offenders are located in the United States although some advance fee letters emanate from Nigeria. On occasions letters have been delivered to other countries for posting from these locations. With letters now being sent electronically, the possibility also arises that messages may be sent through anonymous remailing services.

Various evidentiary problems arise such as the loss of original documents which are often retrieved from victims by the offenders in order to defeat attempts at prosecution. Difficulties have also been experienced in arranging extradition even if offenders are able to be physically located. Although many of the legal and procedural impediments to the successful prosecution of international serious fraud have been removed, a number of practical difficulties remain. The most problematic relate to cost and delay in cases of extraterritorial law enforcement which makes some prosecutions practically impossible.

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impossible.

The Nigerian government itself has taken a range of steps to combat advance fee fraud. Various laws proscribe the conduct involved in advance fee schemes including those relating to obtaining property by deception, theft and forgery. Section 419 of the *Nigerian Criminal Code* (Cap. 777, 1990; see Osimiri 1997, p. 271) was used to prosecute offences in Eastern, Western and Lagos states and, as a result, Nigerian advance fee fraud has come to be popularly known as '419 Fraud' or 'OBT', a Nigerian acronym for obtaining property by false pretences. Between 1987 and 1993, 14,378 cases of obtaining property by false pretences were reported to the Nigerian police, representing a 5.87 per cent increase over this period (Osimiri 1997).

On 1 April 1995, new legislation took effect in Nigeria, the *Advance Fee Fraud and Other Fraud Related Offences Decree* (No. 13 of 1995). This law proscribes three forms of conduct: obtaining property by false pretences, obtaining benefits by false pretences and doubling, washing or minting of currency. Sub-section (1) of section 1 of the Decree has extraterritorial effect proscribing conduct carried out by individuals within or outside Nigeria who defraud persons located in any country. Accordingly, syndicates composed of Nigerians and foreigners are able to be prosecuted in Nigerian courts in respect of offences committed within Nigeria, or elsewhere (Osimiri 1997: 272). The legislation also enables offenders to be tried *in absentia*, convicted and punished if they should return to Nigeria.

The Decree provides for severe penalties of up to ten years' imprisonment without the alternative option of a fine. Additional offences have also been created of inviting foreigners to come to Nigeria in connection with advance fee schemes. The receipt by a victim of an advance fee letter is also declared to be evidence of an attempt to commit an offence. Accomplices are compellable witnesses and offenders charged with offences which carry terms of imprisonment only are not entitled to bail. Wide powers to award compensation and restitution to victims are also provided for. Finally, the Decree provides that these offences may be heard by Special Military Tribunals whose decisions are not subject to judicial review by the High Court of Nigeria. Instead, the decisions of Special Military Tribunals are appealable before a Special Appeal Tribunal (Osimiri 1997). The use of Special Military Tribunals to deal with current problems is not, however, unusual in Nigeria (see Vukor-Quarshie 1997).

Although these reforms may seem necessary to deal with an intractable problem, they detract from principles of fairness and justice which ought to govern all criminal proceedings and which are enshrined in Chapter V of the Nigerian *Constitution* (1992) (see Owoade 1995).

The Nigerian government has also embarked upon a range of preventive measures including education of the local and international community as to the risks involved in replying the advance fee letters. The government has also withdrawn international dialling capabilities from the public and closed down telephone business centres which were used to transmit fraudulent calls and facsimiles. Finally, the Central Bank of Nigeria in Abuja has launched a publicity campaign designed to alert the community to the problem of advance fee fraud (<http://www.expdisc.com/cbn.htm>).

Many countries whose citizens have been victimised have also taken action. In May 1995, three offenders were convicted in Southwark Crown Court in London of conspiracy to defraud ten victims of more than £750,000. Two male offenders were sentenced to five years' imprisonment and ordered to pay £125,000 compensation each. The third offender, a woman, was sentenced to eighteen months' imprisonment (*Canberra Times* 22 May 1995). The Serious Fraud Office's West African Fraud desk has continued to take action and in 1997 prosecuted 111 individuals in the United Kingdom. The British

postal service is also acquiring new powers to intercept and destroy advance fee letters.

In the United States, the Secret Service has primary responsibility for dealing with advance fee fraud. A number of arrests have been made and in 1997 it undertook an international publicity campaign to alert potential victims to the problem. Approximately 100 telephone calls are received each day from potential victims along with up to 500 pieces of correspondence. In April 1998, the Secret Service was able to arrest fifty persons in a joint operation with Nigerian authorities.

On 21 May 1998, the Nigerian Advance Fee Fraud Prevention Bill was introduced into the United States Senate to highlight the problem, to inform the public of the risks and to enable government action to be taken to prevent advance fee fraud (sighted 9 April 1999 at: <http://www.house.gov/markey/nigpr.htm>). The Office of International Criminal Justice within the United States Bureau for International Narcotics and Law Enforcement Affairs has also established an Inter-Agency Working Group on Nigerian Crime which coordinates activities by law enforcement, diplomatic and business organisations.

In addition, two American organisations have established Internet sites with information and advice for victims of advance fee fraud. International Investigation Services (IIS) operates a paid service in which actual advance fee letters and other documents are available for inspection. In addition, IIS maintains a list of known Nigerian advance fee offenders which is over 156 pages long, along with bank account details which have been used and advice on how to recognise a fraudulent proposal (sighted 15 April 1999 at: <http://www.superhighway.is/iis/access.html>). The other organisation, the 419 Coalition, maintains a site with extensive information on advance fee frauds which is up-dated regularly and has links to other fraud prevention agencies (sighted 15 April 1999 at: <http://home.rica.net/alphae/419coal/>).

## Conclusions

Throughout the world considerable publicity has been given to the problem of advance fee fraud. Nonetheless, offences of this nature continue to take place fuelled by vulnerable and gullible victims and increasingly unscrupulous and violent organised criminals.

What began as a relatively simple adaptation of a traditional advance fee ploy has developed into an extensive organised criminal operation with links to other major crime internationally.

Problems associated with gathering evidence and prosecuting offenders in other jurisdictions have meant that relatively few convictions have been obtained. Nonetheless, police services and governments across the globe have embarked upon an effective process of collaboration and sharing of information.

The nature of organised crime is such, however, that displacement invariably occurs where law enforcement proceedings are taken. In the present case this is beginning to take place with offenders moving away from Nigeria to nearby countries such as the Benin Republic, Burkina-Faso, Sierra Leone, Ghana, Cameroon and even South Africa where the schemes are less-widely known. One advance fee e:mail message recently received in Australia came from Benin from a citizen of Zaire who claimed to be in possession of two suitcases containing US\$10 million which he took with him when President Mobutu fell (*Sydney Morning Herald* 1998). Another letter claimed to be from agents of UNITA (the Angolan rebel movement) who claimed to have misappropriated UNITA funds allocated to buy arms and instead purchased

diamonds and precious stones, which were being held in South Africa.

The use of electronic messaging to disseminate advance fee letters represents a particular problem as this enables offenders to disguise their identity and to canvass considerably larger numbers of potential victims more easily. The use of telecommunications also creates additional legal problems in identifying where the illegal conduct took place and where the victimisation occurred.

Hopefully, the changed political situation in Nigeria may reduce some of the impetus for fraud and corruption within the country whilst the draconian laws enacted may have some deterrent effect. Unfortunately, the problem is no longer one for Nigeria alone to deal with as it has taken on a truly international character. As with most schemes directed at unsuspecting consumers, effective education as to the risks involved represents a more appropriate response than embarking upon trans-jurisdictional criminal proceedings.

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