

Proceeds of Crime

NEWSLETTER EDITION 2 – FEBRUARY
2024

KINGSLEY NAPLEY
WHEN IT MATTERS MOST

Welcome to the second edition of the KN Proceeds of Crime newsletter, which has been prepared by [our team](#) of specialist lawyers.

In this edition, covering important developments during the second half of 2023, we highlight developments in the gambling sector, some very significant confiscation proceedings, and the first ever conviction of a solicitor for the offence of "tipping off". Also, don't miss our coverage of the advent of new rules governing the treatment of politically exposed persons and changes to the law on corporate criminal liability.

The contents of this newsletter are for information only, and must not be relied on as legal or professional advice. For further information or advice on any of issues we have written about here, please speak to your usual KN contact, or use [this form](#) to contact the specialist Proceeds of Crime and Money Laundering team.

Thank you to Tallulah Hastings and Phil Taylor for their help in preparing this newsletter.



Nicola Finnerty
Partner



Key Statistics

£339.1m

of assets were recovered via confiscation, forfeiture, and civil recovery orders in the financial year 2022/23.

£15.5m

paid in compensation to victims from recovered proceeds of crime.

Key Acronyms

AML	Anti-money laundering
AMLA	Anti-money Laundering Authority
AFO	Account freezing order
CFT	Combatting the financing of terrorism
CPS	Crown Prosecution Service
DAML	Defence against money laundering
DPA	Deferred Prosecution Agreement
ECCTA	Economic Crime and Corporate Transparency Act 2023
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FIU	Financial Intelligence Unit
MLRs	The Money Laundering Regulations 2017 (as amended)
NCA	National Crime Agency
PEP	Politically exposed person
POCA	Proceeds of Crime Act 2002
SAR	Suspicious Activity Report
SFO	Serious Fraud Office
UWO	Unexplained wealth order

AML training update for the art market

As noted in our previous newsletter, in October 2023, Kingsley Napley AML specialists Nicola Finnerty and Gemma Tombs presented an online MBL seminar on 'Understanding Money Laundering Regulations in the Art Market.'

Among other topics, the seminar covered how an 'art market participant' is defined under the MLRs, submission of Suspicious Activity Reports to the NCA, the risk-based approach to AML, and practical case studies to identify and handle suspicious activities. A recorded version of the seminar is now available to MBL members.



Account freezing orders, account forfeiture orders & unexplained wealth orders

Visit [this page](#) for more information about AFOs, and [this page](#) in relation to UWOs

Case: NCA able to recover funds from target of UWO for the first time

Earlier this year, the NCA obtained a UWO against Yaqub Younis and his company, Regal Capital UK Limited. The respondents were given 60 days to comply with the terms of the order, which required them to explain the source of funds used to purchase 14 properties worth a total of £1.25 million.

According to the NCA, Younis is currently a fugitive, having been recalled to prison for breach of his licence in February 2023. On 14 September, Younis' son made an application to vary the UWO so as to replace his father as the respondent, and extend the compliance deadline by a further 60 days. However, the High Court refused the application thereby triggering a statutory presumption that the assets are recoverable property. The court also granted the NCA's application for a property freezing order in relation to the 14 properties (which had been made subject to an interim freeing order in June 2023) for an initial period of nine months while the NCA's investigation continues.

This is the first time that the statutory presumption has come into effect since UWOs were created by the Criminal Finances Act 2017.

SEPTEMBER 2023 - [NCA press release](#)



AML compliance

Consultation: HM Treasury presses on with AML supervisory reforms

The window for submitting responses to HM Treasury's questions relating to reform of the UK's AML supervisory system closed on 30 September 2023 after a three-month consultation period. The government is now analysing responses but has not set a deadline for the next step of the process.

SEPTEMBER 2023 - [HM Treasury website](#)

Case: Deutsche Bank asset management arm settles ESG and AML claims for \$25 million

Outside of the UK, the asset management arm of Deutsche Bank has entered into two settlements with the US Securities and Exchange Commission (SEC) in response to allegations of ESG misstatements and AML violations. DWS Investment Management Americas was fined \$19 million in relation to the ESG action and \$6 million for the AML failures, according to the SEC.

In the ESG case, the SEC found that the firm had used terms including "top of mind" to describe its attitude toward ESG when marketing to clients and investors, but had not implemented adequate policies and procedures. In relation to AML, between January 2017 and December 2021 the firm had failed to develop and implement a reasonably designed AML programme tailored towards mutual funds, as required

for compliance with the Bank Secrecy Act (one of the key US laws in this area). The firm simply used an incompatible AML programme – including transaction monitoring and training elements – designed for the US operations of Deutsche Bank.

The SEC acknowledged that the firm had adopted a standalone, specific AML compliance programme from December 2021, stopped using an inadequate transaction monitoring system in April 2022, and updated its AML training programme by late 2022.

SEPTEMBER 2023 - [SEC press release](#) | [DWS statement](#)

News: Economic Crime Levy now in force

As covered in our previous newsletter, on 30 September 2023, the government's new Economic Crime Levy (ECL) came into effect. All in-scope entities must now register with the relevant supervising authority, submit an annual return and pay a fee.

The amount to be paid depends on the UK revenue of the relevant entity in the accounting period ending in the previous financial year. There are four ECL bands: those in the 'small' band (revenue under £10.2m) will have no fee to pay and are not required to register for the ECL. Those in the 'medium' (revenue between £10.2 and £36 million), 'large' (£36 million to £1 billion) and 'very large' (over £1 billion) bands will be liable for fees of £10,000, £36,000 and £250,000, respectively.

More guidance is available online.

SEPTEMBER 2023 - [Government policy paper](#)



Case: FCA issues fine of almost £6.5m for AML failings

On 2 October 2023, the FCA announced that ADM Investor Services International Limited (ADMISI) had been fined £6,470,600 for inadequate AML systems and controls. According to the FCA, ADMISI had a high risk of money laundering due to its business model, geographical location of its clients and its propensity to engage with high-risk and PEP clients.

The FCA first raised concerns with ADMISI about its AML systems in 2014, including its primary concern that ADMISI had no formal process to classify clients by risk. When visiting the firm in 2016, the FCA noted significant continued failings, including the lack of a firm-wide money laundering risk assessment and outdated policies which referenced old legislation. ADMISI agreed to a number of requirements as a result, and, by October 2016, the firm had introduced AML procedures. After it took further remedial actions, the FCA lifted its requirements in January 2018.

ADMISI did not dispute the FCA's findings meaning it qualified for a 30% settlement discount

OCTOBER 2023 – [FCA press release](#)

News: New EU AML authority to be created

In a coordinated effort to bolster the fight against money laundering, the EU Council and Parliament have reached an agreement to establish a new European authority, the AMLA (Anti-money Laundering Authority).

The AMLA “will have direct and indirect supervisory powers over high-risk obliged entities in the financial sector”, according to the EU. The seat of the new agency has not yet been decided.

The AMLA will be able to directly supervise certain credit and financial institutions, including crypto asset service providers, where these operate cross-border or are considered high-risk. In the non-financial sector, the AMLA will not have enforcement powers but will be able to carry out reviews and investigations into the way entities apply the European AML/CFT framework, and could issue non-binding recommendations.

The board of the AMLA will be made up of representatives of supervisors and FIUs from all of the EU's member states. There will also be an executive board governing the AMLA which will consist of the chair of the AMLA and five independent full-time members. A previous proposal to give the AMLA budgetary powers has been removed.

DECEMBER 2023 – [Council of the EU press release](#)



Case: Government seizes £34 million property portfolio linked to ongoing corruption proceedings

The common law property doctrine of escheat holds that UK assets of dissolved overseas company (which no longer exist in the eye of English law) vest in the British state. The High Court has ruled that the SFO is able to use this doctrine to replace offshore companies beneficially owned by Gulnara Karimova, daughter of Uzbekistan's former president, with representatives of the UK state, and thereby pursue their confiscation.

Karimova was sentenced to five years in prison in 2015 in relation to corruption charges. The SFO alleges that she channelled large sums of money, received corruptly in exchange for using her influence in the Uzbek government to facilitate access to the state telecoms market, to the offshore companies. Those companies were the ultimate source of funds for UK assets she later purchased. In 2017, the court granted an application to freeze funds held in bank accounts owned by Karimov's former partner along with a number of properties in London.

The High Court agreed with the SFO that the doctrine of escheat applied.

Lisa Osofsky, Director of the SFO at the time, stated in a media report that the SFO had “unpicked a complex financial trail, involving multiple offshore accounts and companies used by Karimova and her family, to take control of these properties.”

AUGUST 2023 – [Law 360 \(subscription needed\)](#)

News: UK plays key role in new rules on recovery of ill-gotten gains

In a move to strengthen global efforts against corruption and financial crimes, the UK has played a pivotal role in driving new international rules aimed at clawing back ill-gotten gains.

A new set of strengthened standards for seizure and confiscation will be adopted by the FATF as part of a two-year project co-led by the UK. The government states that the full text of the updated rules will be published in the coming months.

The project allows the government to claim delivery of another commitment made in the UK's second Economic Crime Plan, which was published in March 2023. The initiative underscores the emphasis being placed on international collaboration to combat the current high volumes of cross-border criminality and reinforces the commitment of the FATF and its members to upholding financial integrity on an international scale.

OCTOBER 2023 – [Government press release](#)

Legislation: Crypto-assets now more easily recoverable

A recently enacted law includes new provisions which bring crypto-assets into the criminal and civil asset recovery regimes under POCA.

Section 179 and Schedule 8 of ECCTA have amended Part 2 of POCA with respect to confiscation orders; while section 180 and Schedule 9 of ECCTA amended Part 5 of POCA in relation to the civil recovery regime (searches, seizure and detention).

This means that, where POCA was previously limited to cash and listed assets, crypto-assets have been specifically listed which allows prosecutors to secure digital goods without having to arrest a suspect or secure a conviction.

OCTOBER 2023 – [Government factsheet](#)



Asset recovery

News: SFO recovers property connected to China bribery scheme

In July 2016, the SFO entered into a DPA – its second ever – with Sarclad, following an investigation which began in 2013. The company was not named at the time as proceedings against individuals were still ongoing. Under the terms of the DPA, Sarclad accepted charges of corruption and failure to prevent bribery in relation to contracts with a total value of more than £17m, and paid penalties of £6.5 million. Three individuals were acquitted in 2019.

The SFO says that the majority of the corrupt contracts to which the DPA related were facilitated by Dr Guang Jiang, who acted as Sarclad's agent in China. He fled to China in 2014, and the SFO has been attempting to recover criminal assets since then.

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On 14 July 2023, the High Court granted orders allowing the recovery of a property in Sheffield, and rental profits, with a total value of more than £280,000. The property had been transferred into the name of one of Jiang's daughters.

JULY 2023 – [SFO press release](#)



Gambling regulation

News: Gambling Commission agrees £3.25 million payment with Betfred following regulatory failures

Done Bros Cash Betting Limited, better known by its trading name of Betfred, has been fined £3.25 million fine for social responsibility and AML failures, following an investigation by the Gambling Commission.

The Commission found that, over various periods between January 2021 and December 2022, there had been a number of AML failures, including: poor record keeping with financial alert thresholds set too high; failing to consistently obtain appropriate documentation from customers; and relying too much on open-source information while taking insufficient steps to corroborate information customers provided on their sources of funds. There had also been a number of social responsibility failures during those periods.

A number of aggravating factors were noted, including the serious nature of the breaches, and the fact that the company's senior management should have been aware of the significant governance issues that led to the breaches. Mitigating factors included the extent of steps taken by the company to remedy the breach and its early request to enter into the regulator's Regulatory Settlement process.

The company reached a settlement with the Gambling Commission under which it will voluntarily make a payment to socially responsible causes, in lieu of a financial penalty of £3.25m. This includes a divestment of just over £1m.

JULY 2023 – [Gambling Commission press release](#) | [Public statement](#)

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Guidance: Gambling white paper process moves to public consultation stage

Following release of the Gambling Act White Paper in April 2023, the government has launched a public consultation process.

The Department for Culture, Media and Sport says the process will look at how to conduct financial risk checks for problem gambling and at what level stake limits should be set for people playing online slot games.

At the same time, the Gambling Commission published its own consultation on financial risk checks, which was open for 12 weeks.

The government previously stated that it will work with the Gambling Commission and other stakeholders to implement changes resulting from the process as soon as possible, with an aim to issue legislation in the summer of 2024.

JULY 2023 – [Department for Culture, Media and Support news](#)

Money laundering & tipping off

Visit the [KNAML Hub](#) for curated links and other resources on AML.

Case: R v Kayani

On 3 July 2023, a man convicted of entering into a money laundering arrangement relating to the proceeds of a Covid-19 fraud was sentenced to 16 months' imprisonment, suspended for 18 months.

Rais Kayani had pleaded guilty to the offence earlier in the year. He had been accused of acting as the beneficiary of a series of false applications made to three local authorities around the UK for loans from the government's Small Business Grant Fund.

The applications were made by unknown individuals, but the payments received from the Fund, totalling £195,000, were made into a bank account belonging to RAK Traders and Services Ltd, of which Kayani was the sole director. Kayani transferred the proceeds to accounts in Hong Kong.

JULY 2023 – [CPS press release](#)



Supervision: FCA begins its review of PEPs

On 5 September 2023, the FCA announced the launch of its review into the treatment of PEPs by financial services firms. The FCA said that it "will look carefully at firms' arrangements for dealing with PEPs based in the UK" and consider how firms are:

- applying the definition of PEPs to individuals;
- conducting proportionate risk assessments of UK PEPs, their family members and known close associates;
- applying enhanced due diligence and ongoing monitoring proportionately and in line with risk;
- deciding to reject or close accounts for PEPs, their family members and known close associates;
- effectively communicating with their PEP customers; and
- keeping their PEP controls under review to ensure they remain appropriate.

The FCA's review is mandated under section 78 of the Financial Services and Markets Act 2023. Its deadline for reporting is the end of June 2024.

JULY 2023 – [FCA press release](#)

News: New SAR portal launched to public

As reported in the last newsletter, the NCA carried out private and beta testing of its new SAR Portal during the first half of 2023. The portal was launched to the public in September.

The NCA has recently reported that, since its launch, more than 5,000 individual users have registered and more than 3,000 organisations are using it to submit SARs. 40,000 SARs have been submitted via the new portal so far.

Those SAR have "an enhanced data structure", with additional fields, as compared with the old system, which allow for the provision of more information for SAR users across law enforcement and government.

SEPTEMBER 2023 – [NCA SARs in Action newsletter, issue 23](#) (PDF)

Case: Solicitor convicted of "tipping off" offence

For the first time, a solicitor has been convicted of an offence contrary to section 333A(3) of POCA, known as tipping off.

In 2018, the SFO made enquiries with solicitor William Osmond in relation to the source of funds used by one of his clients to lend £4 million towards the purchase of a high-end London property. Mr Osmond informed his client about the SFO's investigation, and discussed it with him several times over the next few months.

The SFO brought a prosecution for tipping off and forgery, and Mr Osmond was convicted on 14 November 2023 following a jury trial at the Central Criminal Court. On 30 November, he was sentenced to nine months in prison, suspended for 18 months, along with 100 hours of unpaid work.

NOVEMBER 2023 – [SFO press release](#)

Legislation: Changes to SAR rules under POCA

ECCTA was passed by Parliament and received Royal Assent on 26 October 2023.

Part 5 of ECCTA makes two important changes to POCA, bringing about two new reporting exemptions which mean that:

- when a firm in the regulated sector is exiting a relationship with a customer, it may pay away money without needing to submit a defence against money laundering (DAML) SAR provided the value of the property is less than £1000; and
- a firm can "ring-fence" funds they believe to be criminal property and thereby handle and pay away other funds in the account which it regards to be legitimate, provided that the firm retains at least the value of assets to which its suspicions relate – previously, all funds in an account would become tainted when mixed with funds believed to be criminal property.

On 10 January 2024, the government issued [Guidance](#) on these changes.

OCTOBER 2023 – JANUARY 2024 – [Legislation.gov.uk](#)



Legislation: Domestic PEPs to be treated as lower risk

The Money Laundering and Terrorist Financing (Amendment) Regulations 2023 (Amending Regulations) (SI 2023/1371) were laid on 14 December 2023.

The new regulations came into effect on 10 January 2024 and amend regulation 35 of the MLRs so as to make changes to the enhanced due diligence (EDD) requirements of the MLRs in relation to domestic PEPs. The starting point of any risk assessment in relation to domestic PEP is now that they pose a lower risk than a foreign PEP.

This brings into UK law an approach set out in guidance issued by the FCA in March 2017 (FG17/6), which is to take a differentiated approach to the extent of EDD on lower and higher risk PEPs, and to presume that domestic PEPs present a lower risk. In order to rebut that presumption, and treat a domestic PEP as a higher risk PEP, a firm will need to establish and document enhanced risk factors other than their PEP status.

DECEMBER 2023 – [FATF news](#)

Case: Further convictions in 'cash in suitcases' conspiracy

In January 2024, the NCA secured two additional convictions in connection to a complex conspiracy involving the transportation of £100 million in cash concealed within suitcases. The convicted individuals were part of a sophisticated criminal network responsible for facilitating the illegal movement of large sums of money across borders.

An NCA investigation revealed that the criminal operation made use of a variety of methods to transport the substantial cash amounts, including exploiting vulnerabilities within the banking system. The two recently convicted individuals, Ali Al-Nawab and Mehdi Amrollahbibiyouki, both from London, played crucial roles in the conspiracy, aiding in the movement and concealment of the illicit funds. They acted as couriers, transporting cash which had been collected from UK criminal groups, vacuum packed, sprayed with substances including coffee or air fresheners to try to avoid detection, and separated into suitcases each containing around £400,000. The leader of the conspiracy, Abdullah Alfalasi, was sent to prison for more than nine years in July 2022.

JANUARY 2024 – [NCA press release](#)

Restraint and confiscation

Case: CPS obtains confiscation orders of more than £128m in case against former Nigeria state governor

Following a four-week hearing at Southwark Crown Court, the CPS has obtained a confiscation order of £101.5m against James Ibori, the former Governor of Nigeria's Delta State. This came more than 11 years after Ibori's conviction for several counts of money laundering and fraud, for which he was sentenced to 13 years' imprisonment.

Ibori's co-defendant, his former solicitor Bhadresh Gohil, had been convicted in 2010 of money laundering, prejudicing a money laundering investigation and conspiracy to defraud. He was made subject to a confiscation order of more than £28m.

During the lengthy confiscation proceedings, Ibori had disputed that he had benefited and attempted to disguise his assets. In 2012, he provided a false statement of his income and assets which included details of bank accounts but no balances, and claims of significant earning with no paperwork to back them up.

After the hearing at Southwark Crown Court, the judge found that Ibori had benefitted from his offending to the sum of at least £101.5m, and had sufficient assets available to pay an order of that amount. If he fails to do so, he will be required to spend a further eight years in prison. Meanwhile, Gohil was found to have benefited from his offending to the sum of £42.4m. Failure to pay his order will result in an additional six years imprisonment.

JULY 2023 – [CPS news](#)

After the hearing at Southwark Crown Court, the judge found that Ibori had benefitted from his offending to the sum of at least £101.5m, and had sufficient assets available to pay an order of that amount.

Case: Man convicted of VAT fraud to pay £1.2m confiscation order

An individual who was imprisoned in 2021 following a guilty plea in relation to a charge of committing VAT fraud against HMRC has been ordered to pay a confiscation order totalling £1.2m within three months.

Graham Drury had used his company, Drury Machine Sales Ltd, to claim fraudulent VAT repayments totalling more than £1.8m between August 2014 and July 2017. The confiscation order was made against him following a hearing at Mold Crown Court on 28 July 2023. HMRC told the court that Drury used approximately £1.9 million of funds stolen from taxpayers to purchase a property in the United Kingdom and three Spanish villas, as well as a BMW and two Rolex watches.

Failure to pay the order will result in an additional term of seven years in prison.

JULY 2023 – [BBC news](#)

News: FCA secures confiscation order against convicted CFO

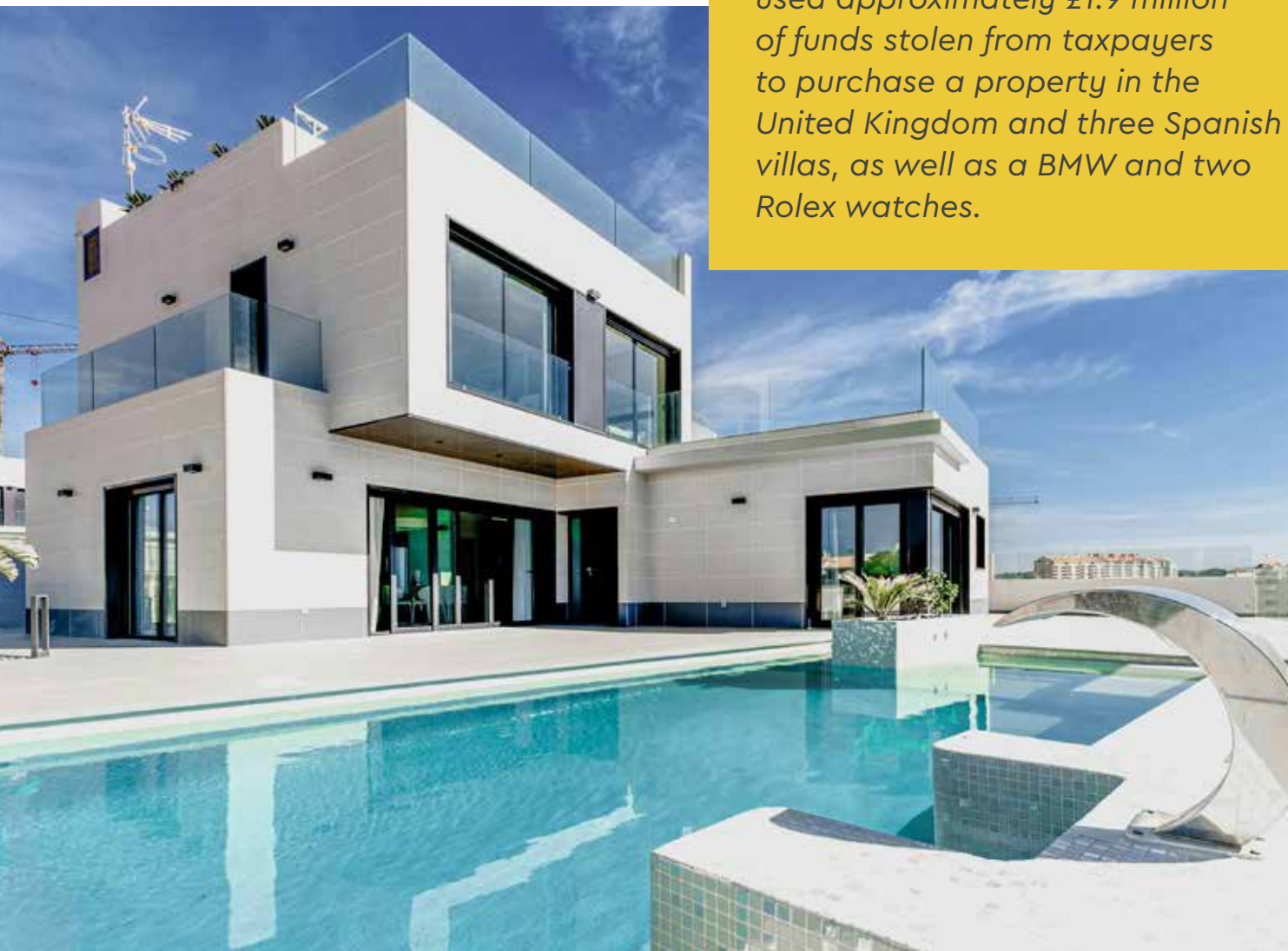
In November 2023, following a hearing at Southwark Crown Court, the FCA successfully obtained a confiscation order against a convicted Chief Financial Officer Timothy Coleman.

Coleman had previously acted as CFO of Redcentric Plc, a publicly-listed IT service provider, and was convicted in February 2022 for offences of false accounting and making misleading statements to the market which had inflated the cash position of the company.

He was made subject to a confiscation order of £355,369 payable within one month with a default term of three and a half years.

NOVEMBER 2023 – [FCA press release](#)

HMRC told the court that Drury used approximately £1.9 million of funds stolen from taxpayers to purchase a property in the United Kingdom and three Spanish villas, as well as a BMW and two Rolex watches.



In other news

News: Reform of corporate liability finally happens

As noted above, ECCTA received Royal Assent on 26 October 2023. Under section 199, a large organisation can be held criminally liable for failing to prevent an associated person from committing fraud, where this is intended to benefit the company. To mount a defence, the company will need to show that it had in place at the relevant time reasonable prevention procedures, or that it was not reasonable in the circumstances for it to do so.

This new criminal offence will not come into force until official guidance has been published and an implementation period has passed.

The same Act has broadened and codified the doctrine of corporate criminal liability in relation to economic crimes. Under section 196 (which came into force on 26 December 2023), where a "senior manager" acting within the actual or apparent scope of their authority commits a relevant offence, their company or partnership will also be liable for the offence.

Relevant offences include theft, fraud, POCA offences, bribery, false accounting and tax evasion.

A new Criminal Justice Bill now making its way through Parliament, if passed in its current form, would further expand this statutory doctrine to cover all criminal offences committed by a senior manager.

SEPTEMBER 2023 – [KN blog](#)

To find out more on the topic of fraud, white collar and financial crime, [click here](#)

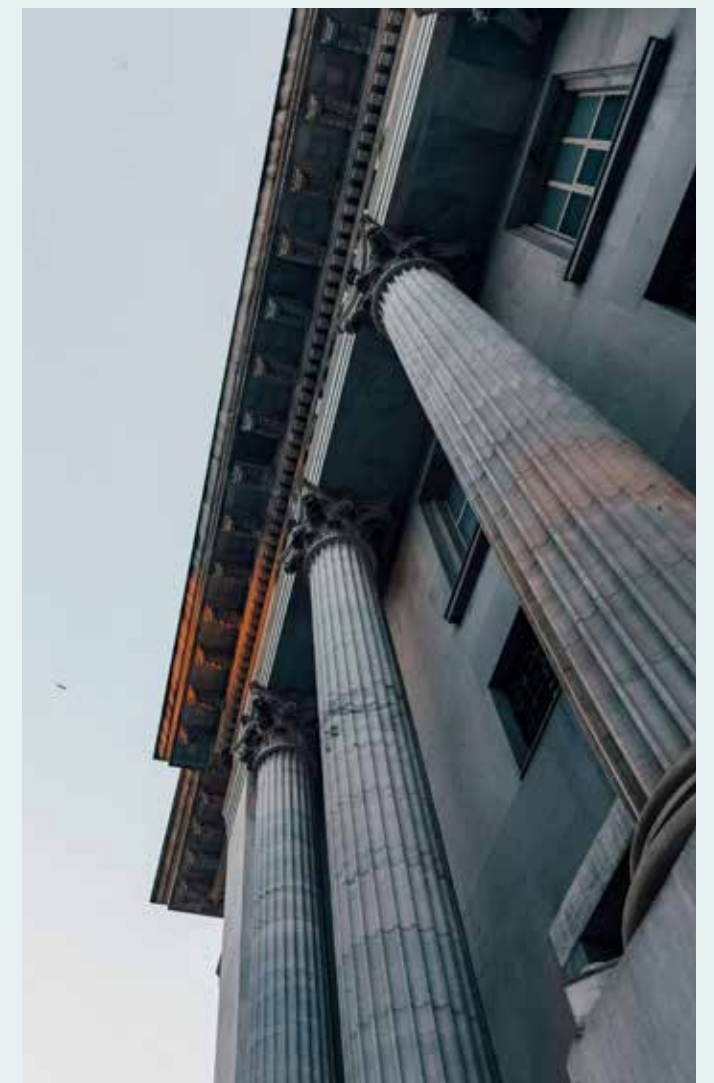
On 14 September 2023, it was announced that Stephen Parkinson had been chosen as the new Director of Public Prosecutions (the head of the CPS).

News: New bosses take over at key law enforcement agencies

On 14 September 2023, it was announced that Stephen Parkinson had been chosen as the new Director of Public Prosecutions (the head of the CPS). He took up his post on 1 November 2023, and will serve an initial term of five years. Stephen was previously the Senior Partner of Kingsley Napley.

Eleven days later, Nick Ephgrave QPM, a former senior police officer, took up his post as Director of the SFO. He has since announced three new SFO investigations. Two dawn raids have been authorised one in connection with the investigation into Axiom Ince and the other in relation to a fraud investigation involving AOG Technics Ltd.

OCTOBER 2023 – [Government/CPS press release](#)



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