

Proceeds of Crime

NEWSLETTER EDITION 1 – JULY 2023



KINGSLEY NAPLEY
WHEN IT MATTERS MOST

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

The effect and reach of POCA is broad, and these newsletters will reflect that. In this inaugural edition, covering important developments during the first half of 2023, we highlight a number of important law enforcement actions, some important case law on forfeiture and confiscation, an example of the consequences of failing to meet a confiscation order, and many more stories. Outside of the immediate POCA world, the start of the economic crime levy, developments in relation to a new corporate fraud offence and the appointment of a new director of the SFO should not be missed.

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 Simran Tatla and Phil Taylor for their help in preparing the newsletter.



Nicola Finnerty
Partner



Key Statistics

£6.3m

was the amount of assets seized or restrained as a result of a "period of intensification" actioned by the NCA in February 2023

61%

increase in the value of asset recoveries under POCA in 2021/22 compared to the previous year, reaching £354 million

Key Acronyms

- AML** – Anti-money laundering
- AFO** – Account freezing order
- CPS** – Crown Prosecution Service
- DAML** – Defence against money laundering
- FATF** – Financial Action Task Force
- FCA** – Financial Conduct Authority
- MLRs** – The Money Laundering Regulations 2017 (as amended)
- NCA** – National Crime Agency
- 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

On Wednesday, 18 October 2023, Kingsley Napley AML specialists Nicola Finnerty and Gemma Tombs will be presenting an online seminar on 'Understanding Money Laundering Regulations in the Art Market.'

Among other topics, the seminar will cover 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.



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: Fresh View Swift Properties Ltd v Westminster Magistrates' Court and others [2023] EWHC 605 (Admin)

In this High Court judgment, Mostyn J provided an important definitional clarity to Section 242 in civil forfeiture proceedings under Part 5 of POCA. In relation to whether the funds received in the claimant's bank account had been obtained through unlawful conduct, Mostyn J emphasised that 'while the words require that the property must have been obtained by the unlawful conduct of an individual they do not require that individual to have owned the property at any point or for that individual to have benefitted from the transaction in any way.'

On the facts, the court determined that the operator of an unlicensed money service bureau engaged in unlawful conduct by receiving money into their bank account and exercised its discretion to order forfeiture.

March 2023 – [Judgment on BAILII](#)



News: Serious Fraud Office seizes almost \$8 million from convicted Brazilian money launderer

The SFO has recovered over \$7.7 million from money launderer Mario Ildeu de Miranda, marking the largest-ever seizure by the SFO from a single bank account. The investigation revealed that Miranda had channelled criminal proceeds through multiple international bank accounts using various company names.

Miranda was convicted of 37 counts of money laundering in Brazil as part of the Operation Car Wash bribery scandal involving state-owned oil company Petrobras. The SFO froze a UK bank account containing the funds linked to Miranda and discovered that the money had been transferred through several banks in Switzerland, Malta, Portugal, the UAE, and the Bahamas before being deposited in London. The investigation also uncovered how Miranda spent the suspected illicit funds on luxury items, including hotels, casinos, and a new car.

Miranda has launched an appeal, which will be heard in February 2024.

March 2023 – [SFO press release](#)

News: Financial Conduct Authority obtains £2m account forfeiture order from QPay Europe Limited

Fintech start-up QPay Europe Limited has agreed to surrender £2 million held in its name after proceedings brought by the FCA under POCA. The money, initially frozen in urgent proceedings in 2020, was alleged to be the proceeds of illegal activity linked to a US conspiracy to commit wire fraud.

While the FCA does not accuse QPay of involvement in the conspiracy, concerns were raised during its application to become a regulated firm. QPay repeatedly moved the funds between bank accounts in various countries, prompting the FCA to withdraw its regulatory application. The funds will now be paid to the UK government under AFOs.

APRIL 2023 – [FCA press release](#)

News: Former London Capital & Finance CEO given 10-month sentence

Former CEO of London Capital & Finance Plc (LCF), Michael Thomson, has received a suspended 10-month sentence for breaching a restraint order on his bank account. The SFO froze Thomson's assets during an investigation into suspected fraud and money laundering involving a mini-bond scheme at LCF, after over £237 million was lost by 11,000 investors between 2014 and 2019. The SFO discovered that Thomson concealed at least £95,000 in an account belonging to his wife, and spent large amounts on luxury items and holidays to allegedly obstruct recovery efforts.

MAY 2023 – [SFO press release](#)





GT Bank settled the case, qualifying for a 30% discount on the penalty.

AML compliance

Guidance: FCA publishes updated AML supervision handbook

The FCA has updated the Office for Professional Body Anti-Money Laundering (OPBAS) sourcebook. The latest version came into force on 10 January 2023.

OPBAS is an organisation within the FCA which oversees the AML work of 22 of the UK's professional body supervisors (PBSs). Among other updates, the new sourcebook provides additional guidance for PBSs on OPBAS's expectations and outcomes. This is intended to improve the consistency and effectiveness of the PBSs' AML supervision.

January 2023 – [FCA publication](#)

Case: FCA fines bank £7.6 million for further failures in AML systems and controls

Guaranty Trust Bank (UK) Limited (GT Bank) has been fined £7,671,800 by the FCA for weaknesses in its AML systems and controls. Between October 2014 and July 2019, the bank failed to conduct adequate customer risk assessments and monitor customer transactions and relationships. It also did not take appropriate action following repeated alerts from the FCA and other sources. GT Bank also previously faced enforcement action for AML failings and received a fine of £525,000 in 2013. GT Bank settled the case, qualifying for a 30% discount on the penalty.

January 2023 – [FCA press release](#)

Consultation: HM Treasury opens consultation into AML supervision reform

On 30 June 2023, HM Treasury published a consultation document seeking views on reform of the UK's AML supervisory system (as promised in the government's Economic Crime Plan 2023-6). There are three consultation objectives: better supervisory effectiveness; improved system coordination; and practical feasibility.

The consultation document sets out four possible models for a future supervisory system set out, each assessed against the three objectives:

- OPBAS+ (i.e. OPBAS being given more powers);
- Consolidation of PBSs (so that there would be two or six, rather than the current 22, for the accountancy and legal sectors);
- a single PBS, potentially supervising some of the sectors currently supervised by HMRC; and
- a single AML supervisor (replacing all PBSs plus the current AML supervisory duties of the FCA, HMRC and the Gambling Commission).

The consultation document is very detailed, with 43 questions on the various options. Question number 42 is particularly big, and asks respondents to provide their analysis of the relative extent to which each of the four reform options would lead to improved supervisory effectiveness and improved system coordination.

There is also a section on sanctions and the role/powers of AML supervisors. The closing date for responses is 30 September 2023.

June 2023 – [HM Treasury website](#)

News: Economic Crime Levy to take effect

On 30 September 2023, the government's new Economic Crime Levy (ECL) comes into effect, and all entities within scope will become liable to registering, submitting an annual return and paying the relevant fee.

The ECL will be collected by the FCA, Gambling Commission and HMRC from the businesses they supervise. Entities supervised by one of the 22 PBSs are required to register with HMRC and pay the levy to it.

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', 'large' or 'very large' bands will be liable for fees of £10,000, £36,000 and £250,000, respectively.

More guidance is available online – [Government policy paper](#)

Asset recovery

News: SFO confiscates more assets in connection with fraud concealed through school donation

The SFO has confiscated an additional £92,500 from Achilleas Kallakis, one of the defendants involved in the UK's largest mortgage fraud case. The funds were exposed as criminal proceeds donated to a theatre at Kallakis' child's private school. After legal action by the family against the school, the SFO confirmed the donation as the proceeds of crime.

The SFO has recovered almost £140 million in proceeds of crime in the past two years.

Previously, the SFO had confiscated £3.25 million from Kallakis in connection with a £740 million fraud case. Kallakis and co-conspirator Alexander Williams were convicted in 2013 for forging documents to obtain substantial loans. The SFO has recovered almost £140 million in proceeds of crime in the past two years, and their investigation into Kallakis and Williams' proceeds of crime is ongoing.

March 2023 – [SFO press release](#)

News: Academic repays more than £1m

Former Cambridge University academic Ehsan Abdi Jalebi has repaid £1 million after an investigation by the NCA. Jalebi had illicitly claimed over £2 million from a green energy project by resorting to fraudulent practices, including falsifying documents to secure government grants for his company, Wind Technologies Ltd. He also exploited the bank accounts of his research students to receive payments, diverting the funds into his personal accounts.

The NCA pursued his hidden assets, resulting in the repatriation of £1 million and an additional £60,000 from a property sale.

April 2023 – [NCA press release](#)

News: Council of the EU agrees approach to proposed Directive on asset recovery

On 9 June 2023, the Council of the EU reached agreement on its negotiating mandate for the Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, adopted by the Commission on 25 May 2022.

This new Directive would have a wide scope, and would apply to crimes including the violation of sanctions. One goal is to set out minimum rules on tracing and identification,

freezing, confiscation and management of property within the framework of proceedings in criminal matters; it also aims to strengthen the abilities of Member States' competent authorities to trace and ultimately recover the proceeds of crime.

The exact scope of the new Directive would depend on the final wording of another Directive (on the definition of criminal offences and penalties for the violation of Union restrictive measures) which is also under negotiation.

June 2023 – [EU press release](#)

Case: SFO granted recovery of funds frozen en route to sanctioned bank

In the case of SFO v Jammal and another in the High Court, the SFO successfully proved a prima facie case that £500,000 being transferred to Jammal Trust Bank, which had been sanctioned by the US in 2019, was tainted as a result of fraud orchestrated by the bank's owner.

The SFO applied under s281 POCA for a summary declaration, in relation to civil proceedings it is bringing on behalf of the victims of the fraud, that the money was recoverable property. The full hearing will take place in six months.

June 2023

Gambling sector

Case: Gambling Commission carries out enforcement actions

TonyBet, an online gambling operator, has been fined £442,750 by the Gambling Commission for breaching fair terms and failing to meet social responsibility and AML regulations. The company will undergo an independent audit to assess compliance.

Unfair terms on TonyBet's website included requesting identification for withdrawals but not deposits, confiscating winnings if anti-money laundering documentation wasn't provided within 30 days, and considering accounts dormant after six months instead of 12. The operator also failed to identify at-risk customers and neglected to interact with them, while lacking adequate risk assessments and controls for money laundering.

Separately, the agency reached a settlement with Vivaro Limited, trading as vbet, under which the company will pay £337,631 following a series of failings. A Gambling Commission investigation found issues with the firm's processes aimed at preventing money laundering and promoting safer gambling. The whole sum will go to socially responsible causes.

January 2023 – [Gambling Commission press release on TonyBet](#) | [Gambling Commission press release on Vivaro](#)

Case: £600k+ action taken against gambling operator

Online gambling operator Blue Star Planet Limited, operating under the brand name 10Bet, has agreed to pay £620,000 following an investigation by the Gambling Commission.

The investigation uncovered significant failures in social responsibility and AML measures implemented by the company.

February 2023 – [Gambling Commission press release](#)

Guidance: White paper on Gambling Act published

The Gambling Act White Paper has been released, marking the conclusion of a process which begun with a call for evidence in December 2020. 16,000 submissions were received (there is a list in an Annex), and the government says this evidence has been supplemented with the output from "hundreds of meetings with a wide range of stakeholders".

The white paper explains the government's plan to reform gambling regulation following a review of the Gambling Act 2005, and is structured around the six main themes in the earlier call for evidence:

- online protections – players and products
- marketing and advertising
- the Gambling Commission's powers and resources
- dispute resolution and consumer redress
- children and young adults
- land-based gambling

The government states that it will work with the Gambling Commission and other stakeholders to implement the changes set out in the white paper "as soon as possible, consulting appropriately where necessary or desirable", with the goal of bringing the main measures into force by the summer of 2024.

April 2023 – [Department for Culture, Media and Sport](#)

Case: Gambling Commission settles with casino software provider for AML failures

The Gambling Commission has reached a £305,150 settlement with Skill on Net Limited, a white label casino operator powering various gambling sites due to shortcomings in social responsibility and AML measures. The company must also arrange for its AML and safer gambling policies, procedures, and controls to undergo and audit by an independent third-party within 12 months.

Skill on Net Limited avoided paying a financial penalty due to evidence of attempts to remediate the failings and the Commission agreed that the settlement amount would be allocated to socially responsible causes.

May 2023 – [Gambling Commission press release](#)



The investigation uncovered significant failures in social responsibility and AML measures implemented by the company.

Money laundering

Click here to visit the [KN AML Hub](#) for curated links and other resources on AML

News: SARs and the NCA

The NCA has released its SARs Annual Report for 2022. Key highlights include:

- A record-breaking 21% increase in SARs received and processed (this figure has increased to 901,255 in the last financial year);
- £305.7 million denied to suspected criminals through Defence Against Money Laundering requests; and
- The establishment of the Combatting Kleptocracy Cell (CKC) to tackle high-end money laundering.

In addition, the SARs Reform Project has increased staff numbers in the UK Financial Intelligence Unit (UKFIU).

SARs can currently be submitted via the NCA's SAR Online webpage. This is due to be updated soon. Between March and June 2023, small groups of organisations were invited to use the new SAR Portal during a live 'Private Beta' testing phase. The 'Public Beta' phase began in June and is expected to run throughout July 2023, by invitation only.

January / July 2023 – [NCA press release](#) | [NCA website](#)

News: Faithfull victims await confiscation outcome

The FCA has told victims of Richard Faithfull, who was found guilty of money laundering in September 2021 and sentenced to almost 6 years in prison, that they will need to wait for news of the result of their compensation claims. In August 2022, the FCA asked individuals to come forward if they thought they may have suffered a loss directly linked to Faithfull's offending.

The confiscation hearing, initially scheduled for 13 October 2022, was delayed due to the intervention of the joint liquidators of one of Faithfull's companies and took place on 12 February 2023. According to the FCA, the confiscation order "may take some time to be granted" while the judge considers the evidence.

February 2023 – [FCA press release](#)



Guidance: Financial Action Task Force publishes first report examining money laundering in the art and antiquities market

The first report published by the FATF emphasizes the attraction of criminals, organized crime groups, and terrorists to the art, antiquities, and cultural objects market for money laundering and funding activities. It acknowledges that while the majority of market participants are not involved in illicit activities, risks persist due to a lack of awareness, investigative resources, and cross-border cooperation.

The report provides risk indicators to identify suspicious activities and stresses the importance of promptly tracing and identifying cultural objects involved in illicit financial activities. It also highlights successful measures implemented by countries, such as specialized units, access to databases, and collaboration with experts and archaeologists to trace, investigate, and repatriate cultural objects.

February 2023 – [FATF news](#)

News: NCA takes down network of criminal cash couriers that laundered over £100m

The NCA has dismantled a criminal network that laundered over £100 million by smuggling cash from the UK to Dubai. Eleven couriers have been convicted for their involvement in the operation, which took place between November 2019 and October 2020. The couriers were paid £3,000 per trip and communicated through a WhatsApp group called "Sunshine and lollipops." The network collected cash from criminal groups in the UK, transported it to counting houses in London, and then smuggled it to Dubai. The money was hidden in suitcases, vacuum packed, and sprayed with substances to avoid detection.

The investigation received support from UK Border Force and the UAE authorities.

April 2023 – [NCA press release](#)

Restraint and confiscation

Case: Man convicted of fraud given four more years for failure to pay confiscation order

Michael Nascimento, convicted for his involvement in a £2.8 million investment fraud, has been sentenced to nearly four additional years in prison for failing to pay a confiscation order. He and five associates defrauded investors through boiler room companies, promising guaranteed returns and using the funds for fraudulent activities and personal expenses. Nascimento was ordered to pay £976,511.81 to satisfy the Confiscation Order, of which he has paid almost half. Despite serving the sentence for non-payment, he remains liable for the outstanding debt, and the recovered money will be used to compensate the victims.

January 2023 – [FCA press release](#)

Case: Accountant ordered to pay back £240k for defrauding NHS

Stephen Day, an accountant who defrauded the NHS, companies, and individuals, has been ordered to pay back nearly £240,000 or face an additional 20 months in prison. Day amassed over £1.3 million by using his position and relationships to carry out fraud and deceive victims.

The CPS noted that determining the true extent of his gains was challenging due to transactions being processed by a web of accounts and the existence of a Bankruptcy Order. However, a Confiscation Order was made against Day, covering all his available assets, valued at £237,688.61.

January 2023 – [CPS news](#)

Day amassed over £1.3 million by using his position and relationships to carry out fraud and deceive victims.

Case: R v Botting [2023] EWCA Crim 441

In this case, gold had been purchased by fraudulently obtained cheques, totalling £47,000, which had been paid into the appellant's bank account at the direction of a criminal gang. After conviction, the appellant argued that the available amount for confiscation purposes did not include the value of the gold. He had been a mere custodian and had passed the value on to others. The argument failed and a confiscation order was made to the value of £54,751.26.

On appeal, the Court of Appeal held that the available amount for confiscation purposes did include the value of that gold. The appellant's argument that either the cheques or the gold, or both, were held on trust for the criminal gang behind the fraud did not succeed.

April 2023

Gold had been purchased by fraudulently obtained cheques, totalling £47,000, which had been paid into the appellant's bank account at the direction of a criminal gang.

Case: Former England U19 footballer ordered to repay £70k following drugs conviction

In September 2022, Faye Dunn, a 39-year-old former England under-19 footballer, was convicted two counts of conspiracy to supply of cannabis and money laundering as part of an organised criminal gang. She was sentenced to imprisonment for three years and nine months. On 8 June 2023, the CPS secured a confiscation order for £69,747.70, based on Dunn's available assets, against a total criminal benefit assessed at almost £153,000. Dunn's father was given a two-year sentence suspended for two years.

The CPS said that the pair had been key players in the illegal drug operation, which had involved the supply of at least 24kg of cannabis, with Faye Dunn acting as the "accountant". She had used an EncroChat device and carried large amounts of cash when travelling abroad in an attempt to evade detection. Dunn has three months to meet the order, or face a further sentence of eight months.

June 2023 – [CPS news](#)

In other news

News: Reform of corporate liability gets closer

For more than a decade, lawyers, academics and business representatives have been discussing the need for a new approach to corporate criminal liability for economic crime. When the Bribery Act 2010 came into force in 2011, introducing a new criminal offence of failure to prevent bribery by an associated person (often referred to as "the section 7 offence"), this represented a significant change in the way in which UK-connected companies could be held to account for the untoward acts of their employees, agents and other individuals, anywhere in the world. Following the success of the section 7 offence, and a number of public consultations, the government has now agreed to expand the failure to prevent model to cover fraud offences.

When it comes into force later in 2023, clause 188 of the Economic Crime and Corporate Transparency Bill will make a company criminally liable for failing to prevent an associated person from committing fraud, where this is intended to benefit the company (although the offence will catch only companies above a certain size or turnover threshold). 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. The [theory is now almost a reality](#), but the practical implications are likely to take many years to crystallise.

The same Bill may also bring about a significant change to the way corporate liability for all economic crimes is worked out. A significant government amendment would mean that where a "senior manager" (defined in the same way as in the Corporate Manslaughter and Corporate Homicide Act 2007) acting within the actual or apparent scope of their authority commits a relevant offence, their company or partnership would also be liable for the offence.

Relevant offences would include theft, fraud, POCA offences, bribery, tax evasion, etc., and the government indicates that the scope could be broadened beyond economic crime in future.

May/June 2023 – [UK Parliament – Economic Crime and Corporate Transparency Bill](#) | [Government press release](#)

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

News: New boss for the SFO

On 5 July 2023, Attorney General Victoria Prentis KC announced the appointment of Nick Ephgrave QPM as the new Director of the SFO. He will take over after Lisa Osofsky leaves at the end of September.

Mr Ephgrave is the first non-lawyer to take up the role. He worked in the police force from 1990 to 2022, and has also sat on the Criminal Procedure Rule Committee and the Sentencing Council.

He will face a number of challenges at the agency, which has suffered a number of high profile defeats in the courts and has been criticised for the low number of criminal investigations opened over the past few years. It has suffered from low staff morale and a disproportionate level of funding, amid a huge surge in fraud cases.

July 2023 – [Government press release](#)



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