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Content update: March 2023

Highlights:

- ▶ *Lloyd's Law Reports: Financial Crime*: new content now available
- ▶ *Money Laundering Bulletin* – External data sources: key inputs for compliance and investigations
- ▶ *Fraud Intelligence* – The real purpose behind the Fraud Risk Wheel
- ▶ *Compliance Monitor* – Are we on the cusp of a “Big Bang 2.0” for financial trading and markets?

Financial Crime on i-law.com

Written by experts in financial crime and compliance, Financial Crime on i-law.com contains an unrivalled collection of news, analysis, as well as international and English law case reports – a must-read for legal practitioners, money laundering reporting officers and compliance officers.

Financial Crime on i-law.com features our industry-leading titles, including *Lloyd's Law Reports: Financial Crime*, *Compliance Monitor*, *Fraud Intelligence* and *Money Laundering Bulletin*.

Recently published in Lloyd's Law Reports: Financial Crime



R v Bond [2023] Lloyd's Rep FC 1

Disclosure - Prosecution failure to disclose material - Relevance to legal applications - Relevance to conduct of defence case - Abuse of Process - Admissibility of guilty pleas.

The applicant (“A”) was one of four men charged on an indictment containing five counts alleging conspiracy to give corrupt payments, contrary to section 1 of the Prevention of Corruption Act 1906. The other accused were Basil Al Jarah (“BAJ”), Stephen Whiteley and Ziad Akle. In count 2, all accused were alleged to have conspired with others to give corrupt payments to an agent of the South Oil Company. In count 4, BAJ and A were alleged to have conspired with others to give corrupt payments to public officials in Iraq. Charges were brought by the Serious Fraud Office.

www.i-law.com/ilaw/doc/view.htm?id=432417

R v Wood [2023] Lloyd's Rep FC 19

Confiscation orders - Reconsideration of available amount - Whether “new calculation” limited to assets held by defendant at time of reassessment - Proceeds of Crime Act 2002, sections 21 and 22.

The appellant was convicted by the Crown Court at Blackfriars of three offences of obtaining a money transfer by deception and an offence of fraud. The appellant applied for permission to appeal an order of HHJ Kelleher of 20 October 2021, his application having been referred to the full court by Ellenbogen J. The appeal raised an issue about the application of section 22 of the Proceeds of Crime Act 2002 (POCA).

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R v Saroya [2023] Lloyd's Rep FC 9

Confiscation proceedings.

In this case the Court of Appeal permitted the appellant to argue a point of law that her counsel had conceded on her behalf in the proceedings before the Crown Court. This approach reflects the course taken by the Supreme Court in *R v Mackle*. In that case the individuals had consented to confiscation orders on the basis they had obtained a pecuniary advantage from an importation of cigarettes. On the known facts, however, it was impossible for them to have obtained such a benefit as a matter of law. The Supreme Court took the view that it would be “manifestly unfair” to hold the appellants to their agreement to the confiscation orders when the only possible explanation was that their consent was given under a mistake of law.

www.i-law.com/ilaw/doc/view.htm?id=432416

R v Andrewes [2023] Lloyd's Rep FC 35

Confiscation orders - CV fraud - Benefit from particular criminal conduct - Recoverable amount - Disproportionality.

This appeal raises an important issue on the confiscation regime laid down by the Proceeds of Crime Act 2002 (POCA). It concerns what is often referred to as “cv (curriculum vitae) fraud”. Typically, as in this case, this occurs where a fraudster includes lies on his or her application form for a job and, as a result, is appointed to the job. The fraudster performs the agreed services satisfactorily and is paid the agreed salary until the fraud is discovered. On a conviction for fraud, should there be a confiscation order stripping the fraudster of his or her earnings (net of tax and national insurance)? In particular, would such a confiscation order be disproportionate under the proviso in section 6(5) of POCA?

www.i-law.com/ilaw/doc/view.htm?id=433250

Financial Conduct Authority v Papadimitrakopoulos and Another [2023] Lloyd's Rep FC 48

Preliminary issue - Financial services - Statutory interpretation of section 9 of the Crime (International Co-Operation) Act 2003 - Use of material obtained through mutual legal assistance - Whether claim should be struck out as an abuse of process.

The issues for the court to determine in this case were: (i) the proper construction of the word “use” in section 9 of the Crime (International Co-Operation) Act 2003; (ii) whether the FCA’s use of the mutual legal assistance (“MLA”) Material in relation to the first defendant fell within that definition and therefore the prohibition as a matter of fact; (iii) whether if the answer to (ii) was “yes”, the FCA had nevertheless obtained consent for collateral use as against D1 as required by section 9 of the 2003 Act; and (iv) the consequences, as a matter of law, if the FCA has breached section 9 of the 2003 Act.

www.i-law.com/ilaw/doc/view.htm?id=433251

Serious Fraud Office v Glencore Energy UK Ltd

[2023] Lloyd's Rep FC 72

Crime - Corporate offending - Corruption - Guilty plea - Bribery Act - Bribery - Failure to prevent - Sentencing - Compensation - Confiscation - Cooperation.

For those who may be engaged in a corporate sentencing exercise, a number of useful points emerge from the remarks of Fraser J. First, where individual losses cannot easily be calculated, arguments as to compensation are better dealt with in the civil courts. Secondly, sentencing is for the court and it is not appropriate for the SFO to propose specific multipliers for each offence.

www.i-law.com/ilaw/doc/view.htm?id=433252

Money Laundering Bulletin

Tipping Off v Asking Questions

While the UK's Proceeds of Crime Act 2002 (POCA) has been in place for two decades, debates around the practicalities of suspicious activity reporting continue. The tipping-off offence under section 333 has received particular attention and criticism. In February 2023, the UK National Crime Agency published Guidance on submitting better quality Suspicious Activity Reports.

www.i-law.com/ilaw/doc/view.htm?id=432665

External data sources: key inputs for compliance and investigations

Whether digging through layers of a complex corporate structure to unearth the ultimate beneficial owners, conducting negative media searches or seeking to trace funds flow through a blockchain, the anti-money launderer (a new term?) will continually be referencing information outside their organisation. Keith Nuthall explores resources on offer.

www.i-law.com/ilaw/doc/view.htm?id=433027

Back to the age-old question: who should bear the cost of KYC and KYB checks?

Around Christmas 2022, writes Claus Christensen of Know Your Customer Ltd, Dutch clients of business banking services received a piece of news they could probably have done without ...

www.i-law.com/ilaw/doc/view.htm?id=431970

Money Laundering Bulletin is the leading source of analysis and comment on developments and practice in the fields of anti-money laundering and combating other illicit finance. Access it at i-law.com and at www.moneylaunderingbulletin.com



Fraud Intelligence

The real purpose behind the Fraud Risk Wheel

Heads of Internal Audit who seek to be effective in fraud detection and prevention can have difficult debates with top management about the available budget and resources for this work, as against their regular internal audit programme.

www.i-law.com/ilaw/doc/view.htm?id=431991

Leading edge

Is the criminal justice system in England & Wales fit to deal with fraud - now over 40% of all recorded crime? Not surprisingly, perhaps, Clare Montgomery KC doesn't think so but, after 40+ years at the criminal bar, she also brings constructive suggestions for improvement in her conversation with colleagues, Ken Macdonald KC and Tim Owen KC, also of Matrix Chambers, in a recent episode of Double Jeopardy: the Law and Politics Podcast.

www.i-law.com/ilaw/doc/view.htm?id=432013

Fraud enters Strategic Policing Requirement for England and Wales

Now accounting for 41 per cent of all criminal offences in England and Wales, fraud features, for the first time under its own head, in the latest version of the Strategic Policing Requirement, which sets priorities for chief constables and police and crime commissioners; it was last updated in 2015.

www.i-law.com/ilaw/doc/view.htm?id=432536



Through the keyhole - remote control

The comprehensive and thus far sustained extension of home-based working sparked by the Covid-19 pandemic has fuelled a growing market in surveillance devices to help managers ensure their employees are working rather than shirking.

www.i-law.com/ilaw/doc/view.htm?id=432379

Fraud Intelligence is a practical resource. In-depth analysis and insights from leading industry professionals make it the trusted and reliable guide to defending against both internal and external fraud and corruption risk and to avoiding potentially complex, expensive and time-consuming investigations and civil or criminal liability. Access it on i-law.com and at www.counter-fraud.com

Compliance Monitor

Are we on the cusp of a 'Big Bang 2.0' for financial trading and markets?

A swathe of reforms in the pipeline to enhance the UK's financial regulatory framework, while boosting competitiveness and growth, are touted as a "once in a generation opportunity" – but are they as radical as Margaret Thatcher's deregulatory programme of 1986?

www.i-law.com/ilaw/doc/view.htm?id=432935

In for a penny – in for a digital pound?

The joint Bank of England-HM Treasury CBDC Taskforce has published a consultation paper on a potential retail UK central bank digital currency (CBDC). This 'digital pound' would be a new form of sterling, similar to a digital banknote, issued by the Bank of England for everyday use by households and businesses.

www.i-law.com/ilaw/doc/view.htm?id=432922

Managing ESG risk for financial institutions

With Environmental, Social and Governance concerns now at the forefront of public and industry agendas, firms that slip up find themselves exposed to potential reputational, stakeholder, litigation and regulatory fallout.

www.i-law.com/ilaw/doc/view.htm?id=432923

What's ahead for consumer finance?

Once again, 2023 promises to be a year of regulatory change. With a mixture of reforms already agreed and yet to be implemented, consultations underway and the promise of more to come, all regulated firms in the UK will be viewing the coming months with some trepidation.

www.i-law.com/ilaw/doc/view.htm?id=432931

Compliance Monitor brings you instructive, yet concise, coverage of the latest UK financial services regulatory initiatives and how they affect you. Keep on top of these changes, as well as expectations of the authorities and what they mean for your business, via practical analysis and guidance on current compliance issues. Access it on i-law.com and at www.compliancemonitor.com



773

Cases published in LLR: Financial Crime

Figure accurate at 28 March 2023

2,914

Articles published in Money Laundering Bulletin on i-law.com since 1999

Figure accurate at 28 March 2023

New General Editor

Welcome to our new *Lloyd's Law Reports: Financial Crime* General Editor

Karl Laird, 6KBW College Hill Chambers.

After 14 years at the helm Jonathan Fisher KC is stepping down as General Editor of Lloyd's Law Reports: Financial Crime. Already known to many of our readers we are delighted to announce Karl Laird as our new General Editor.

Karl became a member of 6KBW College Hill Chambers in October 2019.

Karl first studied law at Queen Mary, University of London, graduating at the top of his year, before completing the BCL at Mansfield College, Oxford, where he obtained a Distinction and was awarded the Law Faculty Prize for Comparative Public Law. Upon completing the BCL, Karl began his legal career as an academic at Oxford and for five years he was a Stipendiary Lecturer and Fixed-term Fellow at various colleges. During this time Karl also taught at the Universities of Bristol, Cambridge and at the LSE. He continues to hold a part-time academic position as a Stipendiary Lecturer and Tutor in Law at St Edmund Hall, Oxford.

Karl is the author of numerous articles and is the co-author (with Professor David Ormerod KC) of Smith and Hogan's Criminal Law. He also writes monthly case notes for the Criminal Law Review.

Karl has particular expertise in financial crime and is responsible for the chapter in Blackstone's Criminal Practice which deals with bribery and corruption. In addition, he is a contributor to Montgomery and Ormerod: Fraud Law and Practice. Amongst various other topics, Karl has written extensively on deferred prosecution agreements.

In addition to criminal law, Karl taught public law at Oxford and other universities. He is an expert on this subject and has written articles which examine various public law issues, the most recent of which is due to be published in Public Law. He also teaches a course on statutory interpretation at the University of Cambridge.

Prior to commencing pupillage, and in conjunction with his academic work, Karl was a Team Lawyer at the Law Commission of England and Wales, where he worked on a project on firearms law (which led to the enactment of provisions in the Policing and Crime Act 2017) and also on a review of official secrets legislation. He lectures regularly to the legal profession and has delivered lectures to the Judicial College, the CPS, the Whitehall Prosecutors' Group and the Hong Kong Department of Justice (among others).

Karl was called to the Bar by Lincoln's Inn in 2018, having been awarded a Lord Mansfield Scholarship and a Hardwicke Entrance Award.

Karl is a Special Adviser to the Independent Reviewer of Terrorism Legislation, Jonathan Hall KC.



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