

Financial Crime on i-law.com

Content update: January 2024

Highlights:

- ▶ *Lloyd's Law Reports: Financial Crime* – Sanctions roundup
- ▶ *Money Laundering Bulletin* – On the inside – profile of a professional launderer
- ▶ *Fraud Intelligence* – The Economic Crime and Corporate Transparency Act 2023: tough medicine?
- ▶ *Compliance Monitor* – AI in financial services: taming your tech

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*.

Sanctions coverage on Financial Crime on i-law.com

With the consequences of sanctions filtering through into litigation, the challenges they pose are taking effect. The cases reported in LLR: Financial Crime during 2023 offer clarity and provide guidance on their interpretation and application (the approach to which these should be applied), along with the features and provisions to be aware of when navigating this area.

R (Fridman) v HM Treasury, Athlone House Ltd (Interested Party) [2023] Lloyd's Rep FC 493; [2023] EWHC 2657 (Admin)
Restrictive measures – Licensing – Basic needs – Prior obligations – Scope of discretion.

At a high level, this judgment is the latest in a line confirming Government's very wide discretion in implementing sanctions under Sanctions and Anti-Money Laundering Act 2018, and the corresponding deference shown by the courts when reviewing these decisions (see recently *LLC Synesis v Secretary of State for Foreign, Commonwealth and Development Affairs* [2023] Lloyd's Rep FC 252, *Dalston Projects Ltd and Others v Secretary of State for Transport* [2023] Lloyd's Rep FC 385 and *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2023] Lloyd's Rep FC 423).

www.i-law.com/ilaw/doc/view.htm?id=437197

Shvidler v Secretary of State For Foreign, Commonwealth and Development Affairs

[2023] Lloyd's Rep FC 423; [2023] EWHC 2121 (Admin)
Sanctions – Effect of designation – Proportionality – Meaning of “associated with”.

The case stands in stark contrast to the first European court decision to overturn Russian sanctions which was handed down at a similar time. On 6 September 2023 Mr Alexander Shulgin, former head of Russian e-commerce platform Ozon and one of the business leaders summoned to a meeting with Putin on the first day of the invasion, successfully challenged his sanctions designation in the European Court of Justice. He was removed from the EU's sanctions list on 15 September 2023.

www.i-law.com/ilaw/doc/view.htm?id=436356

Mints and Others v PJSC National Bank and Another

[2023] Lloyd's Rep FC 443; [2023] EWCA Civ 1132
Civil proceedings – Economic sanctions – Claimant involved in ongoing litigation designated by UK Government preventing dealing in its assets or making available any assets to it – Whether court able to enter judgment on designated claimant's claim – Whether designated person controls entity which is not personal asset of designated person but designated person able to exert influence over entity by virtue of political office.

The parties in this appeal were involved in ongoing litigation in the Commercial Court. The respondents, PJSC National Bank Trust and PJSC Bank Okritie Financial Corporation, were state-owned Russian banks and the claimants in the commercial litigation. The appellants were the defendants to that litigation. The respondent banks claimed some US\$850 million against the appellants on the basis that the appellants conspired with representatives of the respondent banks to enter into uncommercial transactions with companies connected with the appellants by which loans were replaced by worthless or near worthless bonds.

www.i-law.com/ilaw/doc/view.htm?id=436960

Dalston Projects Ltd v The Secretary of State for Transport

[2023] Lloyd's Rep FC 385; [2023] EWHC 1885 (Admin)
Sanctions – Russian sanctions – Sanctions and Anti-Money Laundering Act 2018 – Sanctions Regulations – Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019 No 855) – First Protocol of the European Convention on Human Rights – Judicial Review – Designated person – “Involved person” – Ships – Detention of super yacht – Disproportionate interference with property rights – Secretary of State detention powers.

The case revolves around the claim by the claimants, Dalston Projects Ltd, Sergei Naumenko and Prism Maritime Ltd, that the Secretary of State for Transport's decision to detain a luxury yacht owned by a Russian national, namely Mr Naumenko was in breach the European Convention on Human Rights and improperly applied the Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019 No 855).

www.i-law.com/ilaw/doc/view.htm?id=436165

Further coverage includes

Celestial Aviation Services Ltd v UniCredit Bank AG (London Branch) [2023] Lloyd's Rep FC 181; [2023] EWHC 663 (Comm)
www.i-law.com/ilaw/doc/view.htm?id=433736

R (NCA) v Westminster Magistrates' Court [2023] Lloyd's Rep FC 85
www.i-law.com/ilaw/doc/view.htm?id=433610

LLC Synesis v Secretary of State for Foreign, Commonwealth and Development Affairs [2023] Lloyd's Rep FC 252
www.i-law.com/ilaw/doc/view.htm?id=434551

PJSC National Bank Trust and Others v Boris Mints and Others [2023] Lloyd's Rep FC 99; [2023] EWHC 118 (Comm)
www.i-law.com/ilaw/doc/view.htm?id=433609

Assaad v Council of The European Union

[2023] Lloyd's Rep FC 213; Case T-426/21
www.i-law.com/ilaw/doc/view.htm?id=434550

793

Judgments published in LLR: Financial Crime

Figure accurate at 2 January 2024

Money Laundering Bulletin

On the inside – profile of a professional launderer

An illegal, high-stakes business with demanding, sometimes extremely dangerous clients – money laundering may not be at quite the edge cut by drugs, arms and people traffickers, but it's vital to their operations and calls for particular character traits and skills.

www.i-law.com/ilaw/doc/view.htm?id=436410

Binance pays US\$4.3bn for AML and sanctions breaches – monitor to oversee US exit

The world's largest cryptocurrency exchange must pay a record civil penalty of US\$3.4 billion to US AML agency FinCEN for non-compliance with Bank Secrecy Act regulations and another US\$969m to the US Office of Foreign Assets Control for apparent violations of multiple US sanctions programmes.

www.i-law.com/ilaw/doc/view.htm?id=436733

Muleheaded – FCA finds stubborn failings in UK payment account providers

If fraud constitutes 40% of all reported crime in England and Wales and the funds are laundered through accounts operated by regulated entities, one would think these would be working hard to frustrate the criminals: research by the UK Financial Conduct Authority (FCA) found that most are making some effort but “there were many areas we identified where firms should be doing more”.

www.i-law.com/ilaw/doc/view.htm?id=436534

Round and about – Russian sanctions evasion

Dark fleet oil shipments through restricted western goods imported via third countries, Russia is mastering sanctions circumvention, in the same way – and better, that is, at far greater scale – than Iran and North Korea. This article looks at the ways and means, and how Ukraine's allies are responding.

www.i-law.com/ilaw/doc/view.htm?id=436236

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 via i-law.com and www.moneylaunderingbulletin.com



Fraud Intelligence

The Economic Crime and Corporate Transparency Act 2023: tough medicine?

A corporate offence of failure to prevent fraud, Companies House reforms that impose integrity checks on data submitted and extant, and changes to the identification doctrine that will make it easier to prosecute senior managers – the expansive Economic Crime and Corporate Transparency Act 2023 finally received Royal Assent on 27 October. This article reviews the statute and its likely impact on business in the battle against fraud.

www.i-law.com/ilaw/doc/view.htm?id=436488

Public Sector Fraud Authority shoots past target, saving £311m for UK taxpayer

In its first full year of operation, the UK Public Sector Fraud Authority (PSFA) exceeded targeted savings of UK£180m (US\$221m) in losses to prevent and recover UK£311m (US\$382m). The agency also underspent its 2022/23 budget of UK£11.25m (US\$13.82m) by 7%.

www.i-law.com/ilaw/doc/view.htm?id=436599



3,163

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

Figure accurate at 2 January 2024

EU institutions – a hard look in the corruption mirror

A year on from “Qatargate” – the investigation and arrest of MEPs for allegedly taking payments from governments of non-European Union countries to influence bloc policies – this article looks at how much attitudes to and control of graft in the corridors of power have changed in Brussels.

www.i-law.com/ilaw/doc/view.htm?id=436767

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 via i-law.com and www.counter-fraud.com

Compliance Monitor

AI in financial services: taming your tech

Fast-evolving technologies that mimic cognitive functions bring enormous potential as well as fear of dangers that could slip outside our control. How is the financial services industry to respond?

www.i-law.com/ilaw/doc/view.htm?id=436497



Fund manager value assessments improve – from a low bar

Scrutiny by the regulator of just 14 fund managers has found some progress since its last, dismal, review of value assessments. But, with firms still insisting on profit margins that cannot be justified rationally, there is very little evidence that reforms have brought down charges and made the market more competitive.

www.i-law.com/ilaw/doc/view.htm?id=436245

Living with the Consumer Duty

Financial services firms are now working with strengthened requirements that they deliver good outcomes for their customers – what some might call “TCF on steroids” (Treating Customers Fairly).

www.i-law.com/ilaw/doc/view.htm?id=436244

A post-Brexit rulebook wishlist

The UK's exit from the European Union prompted speculation about a possible re-shaping of the financial services framework – yet progress so far is more of a “damp squib” than “regulatory bonfire”.

www.i-law.com/ilaw/doc/view.htm?id=436501

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 via i-law.com and www.compliancemonitor.com

Recently published in Lloyd's Law Reports: Financial Crime



WM, Sovim SA v Luxembourg Business Registers

[2023] Lloyd's Rep FC 515; Joined Cases C-37/20 and C-601/20

Preliminary ruling – Money laundering – Terrorist financing – Public access to information on beneficial ownership – Respect for private and family life – Protection of personal data – Validity – Transparency – Proportionality – Directive (EU) 2018/843 amending Directive (EU) 2015/849 – Amendment to article 30(5)(c) – Charter of Fundamental Rights of the European Union, articles 7 and 8.

This judgment has important and wide-ranging consequences for all member states. Whilst the decision will no longer be binding on courts in this jurisdiction, it is still likely to have a significant impact given the globalised nature of many companies operating in England and Wales. The ECJ's judgment also provides guidance in relation to how issues of data protection will be considered and balanced by the court. www.i-law.com/ilaw/doc/view.htm?id=437196

R v Ecclestone

[2023] Lloyd's Rep FC 485

Proceeds of crime – Assessment of benefit – Factual findings – Relationship with sentence.

The root of this sentence was HMRC's generous acceptance of a basis of plea: that the defendant's intention in his fraudulent representations was to avoid the costs of the investigation, as opposed to avoiding the payment of tax due. The tax amount was not therefore gain intended but loss risked. The question for the court was therefore whether to sentence on the basis of the gain intended (namely the costs of the investigation), or the loss risked (the amounts due to HMRC as a result of his involvement with these trusts). www.i-law.com/ilaw/doc/view.htm?id=436959

R v Cooper and Others

[2023] Lloyd's Rep FC 413; [2023] EWCA Crim 945

Sentencing – Totality – Primary offending – Money laundering. These three otherwise unrelated appeals were heard together because the primary issue common to each of them was the same, namely the approach sentencing courts should take to totality when the defendant falls to be sentenced for an offence of money laundering, contrary to the Proceeds of Crime Act 2002, and the primary offending that generated the property the defendant went on to launder. www.i-law.com/ilaw/doc/view.htm?id=436357

Gopee v The Crown Court at Southwark, The Financial Conduct Authority (Interested Party)

[2023] Lloyd's Rep FC 401; [2023] EWCA Civ 881

Appeal – General Restraint Orders – Application to set aside – Requirement for hearings.

The main question in this appeal was whether and in what circumstances a civil restraint order could be made or set aside without a hearing. The claimant appealed against two orders. The first was a general civil restraint order (GCRO) made without notice to the claimant. The second was an order made on paper on 28 January 2019, refusing the claimant's application to set aside the GCRO Order. www.i-law.com/ilaw/doc/view.htm?id=436358

Philipp v Barclays Bank UK plc

[2023] Lloyd's Rep FC 359; [2023] UKSC 25

APP fraud – Bank – Duty of care – Contractual relationship between bank and customer.

In this unanimous judgment, the Supreme Court, has overturned the Court of Appeal's decision which widened the Quincecare duty. This judgment makes it clear that the Quincecare duty is limited to cases concerning payment instructions given by an agent on behalf of a customer. www.i-law.com/ilaw/doc/view.htm?id=436164

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