

# Fraud Newsletter No. 49

November 2020



## CASES

**Right of silence applies in market abuse administrative proceedings:** member states not required to punish those who refuse to answer questions put by supervising authorities which could establish responsibility for an offence liable to incur administrative sanctions of a criminal nature: AGs Opinion: [DB v Commissione Nazionale per le Società e la Borsa \(Consob\), Intervener Presidenza dei Consiglio dei Ministri](#); Case C-481/19.

**Search warrants:** “other methods . . . have been not been tried because . . . they were bound to fail” (§2(b)(ii) Sched 1 PCA 84, and “notice . . . may seriously prejudice the investigation” (§14(d)) are separate conditions and must be addressed separately: [R \(Ashbolt\) v HMRC](#) [2020] EWHC (Admin).

## SENTENCING & CONFISCATION

**Calculation of benefit:** (i) market value of property excludes sale costs which are relevant only to calculation of realisable assets; (ii) observations on problems of double counting in joint benefits and lifestyle assumption cases: [Lowther](#) [2020] EWCA Crim 1387.

**S10A POCA Hearings:** (interests of third parties [3P] in assets). (1) 3P is in same position as any litigant whose ownership of property is in issue; (2) 3P entitled to “make representations” in s10A confiscation proceedings; (3) civil standard and burden of proof apply; (4) no civil adverse inference from D or 3P’s failure to give evidence, but judge entitled to have regard to the fact that a party who could have contradicted the opposing case has not chosen to do so. [Forte](#) [2020] EWCA Crim 1455.

**Restraint orders: reasonable living expenses and legal expenses for related civil proceedings:** (i) useful list of non-exhaustive factors re assessment of living expenses; and (ii) s41(4) (absolute prohibition on funding legal expenses) does not extend to civil proceedings, even if the issues are related, but such funding is subject to court’s discretion: [Luckhurst](#) [2020] EWCA Crim 1579.

**Mere custodian/possessor of drugs does not obtaining property** under s76(4) POCA; some proprietary interest must be obtained. Court bound by unchallenged written basis of plea: [Munir](#) [2020] EWCA Crim 1549 [Westlaw].

**Judge must give reasons for confiscation order:** [Ayenesu](#) [2020] EWCA Crim 1569 [Westlaw]

## BILLS, STATUTES & SIS

[Sentencing Act 2020 \(Commencement No 1\) Regulations](#) 2020 SI 2020 No 1236: Sentencing Code in force from 1 Dec. 20.

## CONSULTATIONS, GUIDANCE, CIRCULARS AND REPORTS

### MONEY LAUNDERING:

[Opinion of European Banking Authority on how to take into account ML/TF risks in the Supervisory Review and Evaluation Process](#): EBA 4 Nov 20.

[Corporate liability for economic crime: Call for Evidence: Government Response](#): MoJ: 3 Nov 20. [Evidence inconclusive: remitted to Law Com for expert review.]

[Corporate Criminal Liability](#): Law Com. to investigate and draft Options Paper: Law Com: 3 Nov 20.

[SARs Annual Report 2020](#): NCA 19 Nov. 20. Record no. of SARs (20% increase). £172m recovered (31% increase) as result of DAML requests. [NCA Summary](#).

## NEWS

[International Fraud Awareness Week \(15-21 Nov 20\)](#) ACFE.

### CPS:

[Major Investments scammers brought to justice](#): (£5 year 1.2m investment scam; 10 year £20m Ponzi; 13 year Ponzi): 4 Nov 20.

### FCA:

- [bans 3 from financial services industry for non-financial \(sexual\) misconduct](#): 5 Nov 11.
- [fines TFS-ICAP £3.44 million for market misconduct](#) i.e. “printing” or announcing false trades to simulate market activity: 23 Nov 20. [Final Notice](#).

### SFO:

- [confirms investigation into Bombardier](#): over suspected corruption re Garuda Indonesia contracts/orders: 5 Nov 20.
- [secures £1.2m following investigation into West London property linked to Brazilian bribery scandal \(Operation Car Wash\)](#): 12 Nov 20
- [and FSCS to work together against fraud](#): MoU to assist co-operation and co-ordination MoU: FSCS (Financial Services Compensation Scheme): 19 Nov 20.
- [collaborating with Australian police in AFP investigation of Leighton Offshore Pty Ltd](#) and \$77.6m suspicious payments associated with Iyer and Uaoil re Iraqi oil export contracts: Mirage: 18 Nov 20

### HOME:

[ENRC acknowledges spying](#) - a common tactic in big commercial litigation: ABA Journal: 4 Nov.20

[Former BHS owner jailed for six years for tax evasion](#)- failing to declare £2.2m income: BBC News 6 Nov. 20

[Euribor fraud: French court refuses extradition](#) of national convicted *in absentia* of helping to rig interest rates and sentenced to 8 years because his conduct was not a crime in France at the time: Reuters: 4 Nov 20.

[HMRC 2018-2019m Annual Report and accounts](#): contains references to tax, VAT, customs, child benefit and similar frauds: HMRC: 5 Nov 20.

[Lloyds £1B fraud report delayed by another year](#): The Times: [Message from Dame Linda Dobbs to witnesses](#): 13 Nov. 20

[Regulator urges pensions industry to combat pension scams](#) supported by the Pensions Scams Industry Group (PSIG): TPR: 10 Nov 20

### ABROAD:

[Ex Ghanaian President denies making any money from the Airbus deal](#): Modern Ghana: 3 Nov 20.

[How does corruption shape Asia?](#) Transparency International: 24 Nov 20.

[Carding Action 2020](#): 3 month European operation with Italian and Hungarian police supported by UK & Europol prevent €40m in card fraud losses: 26 Nov 20: Europol.

[Alleged REvil member spills details on group's ransomware operations](#): makes \$100m pa from its attacks: Intel 471: 28 Oct 20.

[DoJ seize \\$1B in Bitcoin linked to Silk Road](#) (an online black market): BBC News: 6 Nov 20.

### Cum-Ex

[German Tax Authorities Probing \\$5 Billion of Losses](#): reviewing 391 open cases with potential illegal payouts of €4,3B in 2019: Bloomberg Tax: 28 Oct 20.

[Trials start in Germany](#) against Warburg bankers: Archyde 6 Nov 20.

[Whistleblower Program: 2020 Annual Report to Congress](#) SEC: 16 Nov 20 - \$175m paid to 39 individuals. In the new financial year \$152m has already been paid out to 3 individuals: [\\$114m](#) (22 Oct 20); [\\$10m](#) (29 Oct 20); and [\\$28m](#) (3 Nov 20).

[Nicholas Sarkozy's corruption trial suspended](#) to assess health of a co-Defendant: Independent 24 Nov 20.