

# Fraud Newsletter No. 48

October 2020



## CASES

- [DPA with Airline Services Ltd](#): s7 UKBA re company's use of agents to win £7.3m Lufthansa contracts: ASL to pay £2.9m (£1.2m penalty, £990k disgorgement, £750k costs). ASL no longer trades: 30 Oct 20.
  - [Final judgment](#)
  - [Statement of Facts](#)
  - [Signed DPA](#)

**Affidavits made voluntarily in disqualification proceedings disclosable** to SFO's parallel Ponzi investigation on application to the court: [OR v Skeene](#) [2020] EWHC 1252 (Ch) [Westlaw].

**Legal Advice Privilege** includes communications with foreign lawyers - *those acting in the capacity or function of a lawyer* - including in house lawyers - and the court will not enquire into how or why the foreign lawyer is regulated or what standards apply under local law: [PJSC Tatneft v Bogolyubov](#) [2020] EWHC 2437 (Comm).

**Fraudulent Evasion of Tax: Evidence and self-incrimination.** Undeclared profits of restaurant. D told HMRC his daybooks accurately recorded his takings and his accountant did his tax. D's failure to provide daybooks at trial properly relevant to his credibility: [Ferati](#) [2020] EWCA Crim 1313 [Westlaw].

**Fraud summing-up - pervasive and profound failings** (serious misdirections of law, failure to summarise evidence, irrelevant homilies): review of judge's duties: [Yousefi](#) [2020] EWCA Crim 791.

**Request for Assistance:** UK Central Authority's response - to direct that a search warrant or production order is sought - is lawful: [R. \(Terra Services\) v NCA](#) [2020] EWHC 1640 (Admin).

**Early unequivocal indication of plea required for full discount** – "likely" guilty plea inadequate: [Hodgin](#) [2020] EWCA Crim. 1388.

**Setting aside a judgement for fraud** (forged signature on profit sharing agreement): application of materiality test in [RBS v Highland Financial Partners](#) [2013] EWCA Civ 328: [Takhar v Gracefield Developments Ltd](#) [2020] EWHC 2791 [Westlaw]

## SENTENCING & CONFISCATION

**Confiscation Order effective when made:** no requirement to be formally written: [Westbrook](#) [2020] EWCA Crim 1243.

**Costs from Central Funds for private prosecutor enforcing a confiscation order:** [Mirchandani v Lord Chancellor](#) [2020] EWCA Civ 1260.

**Beneficial interest determines equitable interest** is absence of POCA tainted gift assertion: [Bevan](#) [2020] EWCA Crim 1345

## BILLS, STATUTES & SIs

[Financial Services Bill](#): introduces tougher penalties for market abuse and revised rules on disclosing information to investors. [HM Treasury Summary](#): 21 Oct 20: and see [Amendments to the Benchmarks Regulation to support LIBOR transition: Policy Statement](#): 21 Oct 20. [Progress of the Bill](#).

[The Criminal Procedure and Investigations Act 1996 \(Code of Practice\) Order 2020](#) 22 Oct 20 brings into force revised Code of Practice as from 31 Dec 20. [Summary of purpose](#)

[Proceeds of Crime Act 2002 \(References to Financial Investigators\) \(Amendment\) \(England and Wales\) Order 2020](#) SI 2020 No. 1978 (re Accredited Financial Investigators) in force 26 Oct 20.

[Sentencing Act 2020](#): granted royal assent: 22 Oct 20. Details in [MoJ Press release](#).

## **CONSULTATIONS, GUIDANCE, CIRCULARS AND REPORTS**

[CMA & SFO memorandum of understanding](#) (published 29 April 2014) updated 21 Oct 20.

[Consultation on revisions to the Attorney General's Guidelines on Disclosure and the CPIA Code of Practice: call for evidence](#): 2 Oct 20 and [A-G's Guidelines on Disclosure \[NOT YET IN FORCE\]](#)

**Money laundering Guidance**: HMRC: 14 & 16 Oct 20.  
**Understanding risk and taking action for -**  
[Money service businesses](#)  
[High value dealers](#)  
[Estate agency and letting agency businesses](#)  
[Anti-Money Laundering Supervision: Trust or Company Service Providers](#)

[International Standards on Combating ML and the Financing of Terrorism & Proliferation](#): FATF Recommendations: updated 28 Oct 20. New interpretive note added re inter-agency framework for domestic co-operation, co-ordination & information exchange.

[SRA Business Plan 2020-21](#): includes expanding AML visits to all high-risk firms on a 3 year rolling basis, reporting directly to OPBAS and HM Treasury (\$29 et seq.): 1 Oct 20.

[Proposed ISA \(UK\) 240 The Auditor's responsibilities re Fraud in an Audit of Financial Statements](#): FRC 20 Oct 20 and [Consultation Paper](#) on the above.

**Search warrants reform**: Summary of Proposals laid before Parliament: [Law Com: 7 Oct 20](#).

[Ofsted's directed surveillance Policy](#): Ofsted: 9 Oct 20 re directed surveillance under RIPA.

[Private Prosecutions: safeguards](#): Justice C'tee: HC 497: 2 Oct 20 (relating to CCRC referral of PO convictions). [Summary](#)

[OFSI Annual Review 2019-2020](#): OFSI 9 Oct 20: Most breaches re Libya but not unexpected as most of frozen assets in UK are Libyan - £11,809m. Reported breaches

total £982.34 (up from £262m in previous year).

[A better look at the French DPA](#): Transp. Internat. 23 Oct 20

[FACTI Panel Interim Report](#): (High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda established by UN) on Tax avoidance, corruption and financial crime and remedial measures: FACTI: 24 Sep 20. [Summary](#)

### **Transparency International:**

[Exporting Corruption \(13<sup>th</sup>ed\)](#): 13 Oct 20 Only 4 countries are described as having active enforcement regimes: US, UK, Switzerland & Israel.

- [Summary](#)
- [Exporting Corruption Table 2020](#).
- [The companies that export corruption](#): 13 Oct 20
- [Foreign Bribery rages across the Globe](#): 13 Oct 20
- [Did an alleged corrupt natural gas contract rob Nigeria of \\$9.6 Billion?](#) weaponising courts of arbitration to misappropriate public funds: 23 Oct 20.

## **NEWS**

### **COVID Fraud:**

[Investigation into the Bounce Back Loan Scheme](#): NAO: 7 Oct 20. [NAO Summary](#): £26B may be lost.

### **FCA:**

- [Market Abuse in a time of Coronavirus](#): speech by Julia Hoggett, FCA Director, Market Oversight at City Financial Global event: 12 Oct 20.
- [Goldman Sachs fine re 1MDB see below](#)
- [FCA investigates 14 firms in Cum-Ex tax scandal across 4 countries](#): Bloomberg: 23 Oct 20. [FCA decline to comment]. For background see [Cum-Ex investigations: UK](#): ICLG.com : 3 Aug 20.
- [Conspiracy to pervert the course of justice](#) charged re hiding an interest in property which might be an asset in part satisfaction of an order that might be made in proceedings brought by FCA: FCA: 28 Oct 20.

### **NCA:**

- [£10m UWO obtained by NCA](#) against Leeds businessman: 7 Oct 20.
- [20 QAAZZ arrests](#) in Latvia, Bulgaria, UK, Spain and Italy re international money laundering network of millions of euros. Europol 15 Oct 20. [6 arrested in UK](#): NCA 15 Oct 20.

## SFO:

- [Former Unaoil executive sentenced for paying bribes to win \\$1.7bn worth of contracts](#): 8 Oct 20.
- [Future Challenges in Economic Crime: A View from the SFO](#): Lisa Osofsky speech (Royal United Services Institute, 8 Oct 20) including wish list of new offences and powers.
- [5<sup>th</sup> individual charged with fraud at Balli Group and Balli Steel](#): 22 Oct 20.
- [Deferred Prosecution Agreements](#): SFO Operational Handbook: Revised 23 Oct 20.

## HOME:

[Law Society condemns special tax on legal profession](#) (£100m levy to fund fight against financial crime): Law Soc. Gazette: 14 Oct 20 - see [Economic Crime Levy: Funding new government action to tackle money laundering](#): HM Treasury Consultation July 20.

**£20.5m 10-year forex Ponzi**: Joseph Lewis, pleaded guilty (4 Sep 20: CPS). Sentenced to 5 years 4 months at Southwark: [CoLP: 19 Oct 20](#).

[Treasury Committee launches new Economic Crime inquiry](#) a review into progress made in combatting economic crime: 23 Oct 20

[Protecting People's Pensions: Understanding and Preventing Scams](#): Police Foundation: Sep 20.

[Boris Becker denies 28 charges of concealing property](#) (including £1m and his tennis trophies) at Southwark Crown Court in Insolvency Service prosecution: BBC News 23 Oct 20.

[National fraud call centre 'not fit for purpose'](#) The Times: 19 Oct 20.

[Use of AI to cut accounts scandals](#) re development of Engine B to create an open platform for client data analysis: *The Times* 22 Oct 20.

## ABROAD:

### AML and CTF

[EU plans](#) for consistent application of national rules: speech by Valdis Dombrovskis: 30 Sep 20

**Global settlement by Goldman Sachs re 1MDB fraud**: [GS agrees to pay \\$2.8B](#) to US DoJ with DPA and GS Malaysia division agrees to plead guilty to violating foreign bribery laws: Guardian: 22 Oct 20: [DoJ Press Release and links](#) -GS appear to have avoided a

compliance monitor- see [DPA](#): 22 Oct 20. [Fined £350m by Hong Kong](#): New Straits Times: 22 Oct 20; and [FRA and PRA fine GS International £96.6m for 1MDB risk management failures](#): FCA 22 Oct 20 and [Bank of England News Release](#): 22 Oct 20. ([GS previously paid \\$3.9B to Malaysia](#): BBC News 24 July 20.)

**FinCen prosecutors demand \$60m in civil penalties** for allegedly mixing bitcoins for criminals: [Coindesk 19 Oct 20](#). Criminal proceedings in a US federal court also contemplated.

[Paris-based financial prosecutor makes groundbreaking switch to private practice](#): Global Legal Post: 12 Oct 20. Eric Russo, a lead PNF prosecutor (approximate equivalent to the SFO) has joined Quinn Emanuel Urquhart & Sullivan in Paris as a partner. Russo was involved in HSBC, Société Générale and Airbus investigations and DPAs).

