

Financial Crime on i-law.com

Content update: August 2024



Highlights:

- ▶ *Lloyd's Law Reports: Financial Crime* – latest Reports
- ▶ *Money Laundering Bulletin* – UK Court of Appeal clarifies key proceeds of crime points in decision that police misapplied law
- ▶ *Fraud Intelligence* – Call to delay to APP fraud reimbursement rejected
- ▶ *Compliance Monitor* – Actions that led to 50% cut in HSBC's TCF fine

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 i-law.com round-up

With the consequences of sanctions filtering through into litigation, the challenges they pose are taking effect. The cases reported in LLR: Financial Crime 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.

Available in LLR: Financial Crime Plus:

Vneshprombank LLC v Georgy Ivanovich Bedzhamov and between Lyubov Kireeva (as Bankruptcy Trustee of Georgy Bedzhamov) v Georgy Bedzhamov [2024] Lloyd's Rep FC Plus 15
Application for declaration – Legal test for establishing a “reasonable cause to suspect” that an entity is owned or controlled by Designated Persons within meaning of regulations 5 and 6 of the Russia (Sanctions) (EU Exit) Regulations 2019 designation – Whether the existence of a “reasonable cause to suspect” is enough to establish an offence under the 2019 Regulations.

This case sets an important precedent in the interpretation of UK sanctions legislation, as it clarifies the factors that could establish a “reasonable cause to suspect” that an entity remains owned or controlled by a UK designated person subject to an asset freeze, even after a formal transfer of ownership. The decision also clarified that, as a matter of statutory construction, the asset freeze restrictions under regulation 11 of the 2019 Regulations (SI 2019 No 855) are only triggered if, as a matter of fact, the funds or economic resources in question are owned, held or controlled by a designated person.

www.i-law.com/ilaw/doc/view.htm?id=439856

Celestial Aviation Services Ltd v UniCredit Bank GmbH, London Branch (formerly UniCredit Bank AG, London Branch) [2024] Lloyd's Rep FC Plus 17

Sanctions – Banking – Statutory interpretation – Letters of Credit – Aircraft leasing – Russia (Sanctions) (EU Exit) Regulations 2019 – Russia Sanctions (EU Exit) (Amendment (No 3) Regulations 2022.

The key sanctions restriction engaged in the case was regulation 28(3)(c) of the Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019 No 855), which prohibits the provision of financial services or funds in connection with transactions involving restricted goods or technology destined for individuals or entities associated with Russia or for use within Russia. This case highlights the need for legal practitioners to proceed cautiously when clients attempt to justify actions through a purposive interpretation of sanctions regulations. Sanctions, often imposed in haste, can inadvertently encompass activities beyond their intended scope.

www.i-law.com/ilaw/doc/view.htm?id=439855

Available in LLR: Financial Crime:

Khan v Secretary of State for Foreign, Commonwealth and Development Affairs [2024] Lloyd's Rep FC 49
Court review under Sanctions and Anti-Money Laundering Act 2018, section 38 – Grounds of designation – Whether the designation was ultra vires – Whether the designation is a disproportionate interference with article 8 and A1P1, ECHR – Padfield principles and the test for proportionality – Compatibility of the 2019 Regulations with the ECHR.

This case is an important development in the judicial approach to sanctions challenges, as it provides further clarification on how the court will approach the designation of sanctioned individuals, particularly in relation to the issue of proportionality and whether sanctions designations constitute a disproportionate interference with human rights.

www.i-law.com/ilaw/doc/view.htm?id=438265

Dalston Projects Ltd v Secretary of State for Transport: Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs [2024] Lloyd's Rep FC 151; [2024] EWCA Civ 172
Sanctions – Designated persons – Detention Order – Minister's powers and duties – Proportionality – Protection of property – Peaceful enjoyment of possessions – Court powers – Human Rights Act 1998 – Russia (Sanctions) (EU Exit) Regulations 2019.

This is the first appellate consideration on the correct approach to challenges to sanctions decisions made under the post-Brexit regime. While the particular factual issues are interesting, the importance of this decision is on the distillation of the principles to be applied by a court on reviewing a challenge to a decision of the executive on the grounds of proportionality under the Human Rights Act 1998 and the approach of an appellate court thereafter.

www.i-law.com/ilaw/doc/view.htm?id=439232

Further coverage includes

R (Fridman) v HM Treasury, Athlone House Ltd (Interested Party) [2023] Lloyd's Rep FC 493; [2023] EWHC 2657 (Admin)
www.i-law.com/ilaw/doc/view.htm?id=437197

Mints and Others v PJSC National Bank and Another [2023] Lloyd's Rep FC 443; [2023] EWCA Civ 1132
www.i-law.com/ilaw/doc/view.htm?id=436960

Shvidler v Secretary of State For Foreign, Commonwealth and Development Affairs [2023] Lloyd's Rep FC 423; [2023] EWHC 2121 (Admin)
www.i-law.com/ilaw/doc/view.htm?id=436356

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

Money Laundering Bulletin

Wolfsberg Group seeks pivot to effective risk-based AML (2024) 316 MLB 13

Twelve global banks, members of the Wolfsberg Group, want to see more effective 'monitoring for suspicious activity'.

www.i-law.com/ilaw/doc/view.htm?id=439709

FATF says "negligible" progress on virtual assets AML implementation in last year (2024) 316 MLB 16

A Financial Action Task Force (FATF) paper has warned that governments are failing to strengthen anti-money laundering/counter financing of terrorism controls on virtual assets and virtual asset service providers, with only 25 per cent of those surveyed fully or largely compliant with FATF guidance.

www.i-law.com/ilaw/doc/view.htm?id=439785

UK Court of Appeal clarifies key proceeds of crime points in decision that police misapplied law (2024) 316 MLB 7

The Court of Appeal, on 27 June, ruled that the UK National Crime Agency had misconstrued the Proceeds of Crime Act when it decided, entirely within its discretion, not to open a criminal investigation into money laundering in connection with the importation of cotton goods from Xinjiang, China, which the World Uyghur Congress claimed were made by forced labour.

www.i-law.com/ilaw/doc/view.htm?id=439673

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



Compliance Monitor

Marrying AI and ethics in financial services (2024) 10 COM 6

In this transformative period of technological change for financial services, incorporating regulatory compliance and ethical considerations into the adoption of artificial intelligence will be key to long-term success.

www.i-law.com/ilaw/doc/view.htm?id=439687

How a "fat finger" trade defeated Citi's weak controls (2024) 10 COM 10

Just an ordinary morning and a bit of careless typing rattled markets across Europe and spiralled into a crisis costing Citigroup over £100 million and counting. Yet the firm had received repeated regulatory and internal warnings about flaws in their trading controls.

www.i-law.com/ilaw/doc/view.htm?id=439688

Retirement income advice review fails nearly half of files (2024) 8 COM 10

A deep dive into retirement income advice by the FCA has exposed numerous concerns - in particular, an appalling standard of record-keeping. Advisers need to focus not only on the acquisition of technical knowledge, but also on compliance.

www.i-law.com/ilaw/doc/view.htm?id=438925

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 with our practical analysis and guidance on current compliance issues. Access via i-law.com and www.compliancemonitor.com



Fraud Intelligence

Digital assets and litigation - square pegs in round holes? (2024) 4 FRD 13

Although the cryptoasset marketplace is a hot target for frauds, victims still face uncertainty in the courts over whether their item is "property", if a third party could be deemed liable and how cryptoassets should be valued. Sarah Murray of Stevens & Bolton discusses some of the legal issues in play.

www.i-law.com/ilaw/doc/view.htm?id=439588

Autonomy founder acquitted of all fraud charges in US (2024) 4 FRD 8

UK tech entrepreneur Dr Mike Lynch was found not guilty of 14 counts of fraud and one of conspiracy by a jury in San Francisco on 6 June.

www.i-law.com/ilaw/doc/view.htm?id=439369

UK regulator rejects call to delay to APP fraud reimbursement (2024) 4 FRD 9

The UK's Payments Systems Regulator has rejected a 10 June plea from industry group the Payments Association for a year's delay to this autumn's start of mandatory reimbursement for victims of authorised push payment fraud.

www.i-law.com/ilaw/doc/view.htm?id=439436

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



Financial Regulation International

Whistleblower rewards

Revolutionary, repugnant, or at least worth a try? (2024) 27 FRI 04 1

World Whistleblowers Day celebrates the role whistleblowers play in society. Is it time to go further and positively incentivise them to come forward, and reward them with financial incentives?

www.i-law.com/ilaw/doc/view.htm?id=439567

Time for change

Serious Fraud Office urged to introduce independent disclosure review process (2024) 27 FRI 04 3

Five-year plans have become a key communication tool for detailing the ambitions and medium-term objectives of the UK's Serious Fraud Office (SFO). The SFO Strategy 2024-29, which published in April, is the latest example.

www.i-law.com/ilaw/doc/view.htm?id=439730

Coming soon

Financial Regulation International will be exploring the evolving regulatory landscape, adaptations and the impact of globalisation, with expert contributions from the Global South Dialogue on Economic Crime, in a special issue which will be available soon on i-law.com. For further information contact kate.clifton@lloydslistintelligence.com

Financial Regulation International provides coverage of the latest regulatory developments and trends affecting the global financial services sector. It includes practitioner commentary on key court judgments, updates to existing statutes, and in-depth academic analysis on a broad range of subjects relevant to lawyers, compliance officers and financial advisers. Access via i-law.com and www.financialregulationintl.com



Meet our experts

Lloyd's Law Reports: Financial Crime is written and compiled by experts in the financial services sector. Their industry knowledge and familiarity with key issues and current trends ensures *Lloyd's Law Reports: Financial Crime* is an essential source of insight and information.

General Editor

Karl Laird, 6KBW College Hill Chambers; St Edmund Hall, University of Oxford.

Karl became a member of 6KBW College Hill Chambers in October 2019. Karl first studied law at Queen Mary, University of London, before completing the BCL at Mansfield College, Oxford. Upon completion, Karl began his legal career as an academic at Oxford. He continues to hold a part-time academic position as a Stipendiary Lecturer and Tutor in Law at St Edmund Hall, Oxford, and teaches a course on statutory interpretation at the University of Cambridge.

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

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Recently published in *Lloyd's Law Reports: Financial Crime*



Lloyd's Law Reports: Financial Crime is the unrivalled source of authoritative content in this subject area. Legal professionals around the globe regard *Lloyd's Law Reports: Financial Crime* as the leader in providing the latest case law and approved judgments.

R v Luxton [2024] Lloyd's Rep FC 201; [2024] EWCA Crim 340
Confiscation – Power to vary or rescind sentence – Prosecutor's right to appeal confiscation order.

This case demonstrates that the court will not allow criminals to keep their proceeds on the basis of a legal technicality. Pursuant to section 14(4) of the 2002 Act, if there are "exceptional circumstances" a confiscation application can be postponed beyond the permitted two-year period.

www.i-law.com/ilaw/doc/view.htm?id=439733

R (Competition and Markets Authority) v Competition Appeal Tribunal [2024] Lloyd's Rep FC 214; [2024] EWHC 904 (Admin)
Judicial review – Search warrants – Domestic premises – Business premises – Propensity to destroy evidence – Competition Act 1998, section 28 and 28A.

This investigation concerned what the Competition and Markets Authority believed was a secret cartel, where businesses are involved in damaging forms of anti-competitive agreements. The judgment also contains interesting and helpful obiter remarks regarding ex parte applications, and the right of the other party to be given notice and the opportunity to respond.

www.i-law.com/ilaw/doc/view.htm?id=439731

Pradip Daya (aka Pradip Chavda) v Crown Prosecution Service [2024] Lloyd's Rep FC 229 [2024] EWHC 1091 (Admin)
Confiscation orders – Certificate of Inadequacy – Unidentified assets.

This case shows the importance of being honest with the court regarding available assets from the beginning of confiscation proceedings and throughout any subsequent proceedings.

www.i-law.com/ilaw/doc/view.htm?id=439732

R v Hughes and Another [2024] Lloyd's Rep FC 189; [2024] EWCA Crim 357

Proceeds of crime – Confiscation – Realisable assets – Extent of interest in property built on land owned by another – Route of appeal against determination – Proceeds of Crime Act 2002.

The applicant (A) pleaded guilty to 39 offences of manslaughter and one of conspiring to assist unlawful immigration, for his role in smuggling illegal immigrants across the Channel since 2018 and the deaths of 39 Vietnamese nationals in October 2019.

www.i-law.com/ilaw/doc/view.htm?id=439233

R v Hayes and Another [2024] Lloyd's Rep FC 105; [2024] EWCA Crim 304

Conspiracy to defraud – Libor and Euribor manipulation – CCRC reference – Binding precedent – Relevance of US appellate judgment.

The case raises two points of general interest. The first concerns the approach of the Court of Appeal to CCRC (Criminal Cases Review Commission) references where the appellant seeks to extend his grounds of appeal beyond those set out in the reference itself. The second point of interest concerns the Court of Appeal's approach to the doctrine of precedent.

www.i-law.com/ilaw/doc/view.htm?id=438923

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