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POCA, Confiscation and Asset Recovery Brochure

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Confiscating the proceeds of crime has become a major policy goal over the past decade. Such cases affect not only criminal defendants but also their families, those to whom defendants owe money and with whom they do business, the financial services industry and, in particular, the victims of crime. From being an esoteric area of law giving rise to just a few cases a year, asset recovery has moved to the heart of criminal justice policy, not just in the United Kingdom but across the world. Moreover law enforcement agencies have publicly declared their intention to make ever-greater use of the civil recovery proceedings created by the Proceeds of Crime Act. Asset recovery cases often involve a convergence of criminal law, public law, property and human rights law and require practitioners who are comfortable in both the civil and criminal jurisdictions and who understand the complexities of trans-national litigation.

A unique combination of strengths and experience:

Matrix members have been at the forefront of developments in the law concerning the proceeds of crime over the past decade. Members have been involved in an overwhelming majority of the seminal cases in the field before the European Court of Human Rights, the House of Lords/Supreme Court and the Court of Appeal.

Two members are editors of *Smith, Owen and Bodnar on Asset Recovery* (published by OUP), a leading text on the law of confiscation and asset recovery. Three further members are contributors. Members lecture on asset recovery and confiscation both in the UK and abroad.

Our members were involved in the two largest money laundering prosecutions ever brought in Jersey. Members have particular expertise in cases with an international aspect, having dealt with cases involving parallel or predicate proceedings and/or assets located throughout Europe, the United States, the Caribbean, the Middle East, Africa, Asia, the Far East and Australia.

We are able to provide both advice and representation in connection with proceedings and discrete advice concerning proceeds of crime issues to individuals and corporate clients.

Cases

A v H.M Treasury [Tim Owen QC, Rabinder Singh QC, Raza Hussain, Dan Squires, Alex Bailin] [2010] UKSC 2. Ruling by a seven-judge Court that the regime for freezing the assets of those suspected of involvement in terrorist financing was outside the scope of the United Nations Act.

R v Rollins, R v McInerney [Sam Grodzinski] [2009] EWCA Crim 1941, Times 20th October 2009. Concerned the question whether the FSA has jurisdiction to prosecute for offences of money laundering.

Serious Organised Crime Agency v Pelekanos [Andrew Bodnar] [2009] EWHC 2307 (QB). Concerned the correct approach to following and tracing property acquired partly with criminal funds and partly with legitimate funds in civil recovery proceedings.

Barnett v Director of Public Prosecutions [Julian Knowles] [2009] EWHC 2004 (Admin). Concerned the question whether Justices are permitted to issue a warrant for a defendant's arrest to enforce a confiscation order after a sentence in default had been served.

CPS v N, CPS v P, R v D [Tim Owen QC, Andrew Bodnar] [2009] EWCA Crim 1573, [2009] Crim LR 811, Times 18th August 2009. Concerned the correct approach to questions of abuse of process in confiscation proceedings.

Notable cases

R v Knaggs [Tim Owen QC] [2009] EWCA Crim 1363, Times 17th August 2009. Concerned the question whether a defendant was entitled to challenge the basis of the prosecution case in confiscation proceedings following an unqualified plea of guilty.

Serious Organised Crime Agency v Perry and Others [Clare Montgomery QC] [2009] EWHC 1960 (Admin), [2009] ACD 68. Concerned the question whether the Court has jurisdiction to make disclosure and information orders under POCA against individuals neither resident nor domiciled in the UK.

R v Seager, R v Blatch [Clare Montgomery QC] [2009] EWCA Crim 1303, Times 16th July 2009, [2009] Crim LR 816. Concerned the correct approach to the calculation of benefit for confiscation purposes where the defendants had received a salary while working to resolve issues caused by their criminality.

R v Briggs-Price [Tim Owen QC] [2009] UKHL 19, [2009] 1 AC 1026, [2009] 2 WLR 1101, [2009] 4 All ER 594, [2009] HRLR 21, Times 30th April 2009. Concerned the question whether the Crown is entitled to prove a benefit in confiscation proceedings beyond that arising from the indictment without reference to the statutory assumptions, and also the correct standard of proof in such circumstances.

R v Peacock and Gillett [Andrew Bodnar] [2009] EWCA Crim 654. Concerned the question whether the Crown Court is entitled to increase a confiscation order by reference to hidden assets.

Heath Sinclair v Glatt and Others [Andrew Bodnar] [2009] EWCA Civ 176, [2009] 1 WLR 1845, [2009] 4 All ER 724, Times 16th April 2009. Concerned the question whether a receiver appointed and discharged under the CJA retained a lien over assets previously subject to the receivership for the purposes of discharging receivership costs, even if the assets are not beneficially held by the defendant.

Revenue and Customs Prosecution Office v Briggs-Price and O'Reilly [Clare Montgomery QC] [2009] EWCA Civ 568. Concerned the appropriate exercise of discretion under the DTA when deciding whether it is appropriate to release funds for legal expenses.

R v Allpress, R v Symeou, R v Casal, R v Morris, R v Martin [Tim Owen QC, Andrew Bodnar] [2009] EWCA Crim 8, [2009] 2 Cr. App. R. (S.) 58, [2009] Crim LR 363. (Five Judge Court) Concerned the appropriate measure of benefit to couriers in money laundering cases, the question expressly left open by the House of Lords in *R v May*.

R v Wright [Andrew Bodnar] [2008] EWCA Crim 3207, [2009] 2 Cr. App. R. (S.) 45, [2009] Crim LR 373. Considerations to be taken into account in making a financial reporting order under the Serious Organised Crime and Police Act 2005, in particular whether such orders could be made in support of a confiscation order.

A, K, M, Q, G v HM Treasury [Rabinder Singh QC, Tim Owen QC, Dan Squires] [2008] EWCA Civ 1187, [2009] 3 WLR 25, [2009] 2 All ER 747, [2009] ACD 16, Times 12th November 2008. Concerned the question whether assets may be frozen, and criminal liability created, through the use of a statutory instrument when giving effect to a UN Convention.

Notable cases

Grayson and Barnham v United Kingdom [Tim Owen QC, Andrew Bodnar] (2008) ECtHR, Times 2nd October 2008. Concerned the compatibility with the Article 6 ECHR of findings of "hidden assets" in confiscation proceedings based on a presumption that a defendant retained assets equal to his benefit from crime.

Redknapp and Another v Commissioner of Police of the Metropolis and Another [Tim Owen QC, Alex Bailin] [2008] EWHC 1177 (Admin), [2009] 1 WLR 2091, [2008] 1 All ER 229, Times 16th June 2008. Concerned various issues connected with the issuing and execution of a search warrant.

R v Green [Tim Owen QC, Andrew Bodnar] (Part of *R v May*, *Jennings v CPS*, *R v Green*) [2008] UKHL 30, [2008] 1 AC 1053, [2008] 2 WLR 1154, [2008] 4 All ER 119, [2008] 2 Cr. App. R. 30, [2009] 1 Cr. App. R. (S.) 32, [2008] Crim LR 740, Times 19th May 2008. Concerned the correct approach to the calculation of benefit in cases of joint enterprise.

AP and U Ltd v Crown Prosecution Service and Revenue and Customs Prosecution Office [Andrew Bodnar] [2007] EWCA Crim 3128, [2008] 1 Cr. App. R. 39, [2008] HRLR 16. Concerned the appropriate remedy for a defendant left without representation because of the inadequacy of legal aid and the prohibition on permitting access to restrained funds for legal fees contained in POCA.

R v Bewick [Andrew Bodnar] [2007] EWCA Crim 3297, [2008] 2 Cr. App. R. (S.) 31. Concerned the question whether the Court should embark on complex proceedings for a compensation order when confiscation proceedings failed for technical reasons.

R v Nadarajah [Andrew Bodnar] [2007] EWCA Crim 2688. Concerned the correct approach to allegations of mortgage fraud in confiscation proceedings arising from allegations of drug trafficking.

Togher v Revenue and Customs Prosecution Office [Andrew Bodnar] [2007] EWCA Civ 686, [2008] QB 476, [2008] 2 WLR 82, [2007] UKHR 1079. Concerned the compatibility with Article 7 ECHR of applying the enforcement provisions of the DTA in the case of a defendant whose offence was committed before that Act came into force.

R v Green [Andrew Bodnar] [2007] EWCA Crim 1248, [2007] 3 All ER 751, Times 15th June 2007. Concerned miscellaneous issues arising from confiscation proceedings.

R (Revenue and Customs Prosecution Office) v Criminal Cases Review Commission [Andrew Bodnar] [2006] EWHC 3064 (Admin), [2008] 1 All ER 383, [2007] 1 Cr. App. R. 30, [2007] Crim LR 383, [2007] ACD 39. Concerned the question whether the CCRC is bound to follow the practice of the Court of Appeal in change of law cases.

Hashah v Customs and Excise Commissioners [Andrew Bodnar] [2006] EWCA Crim 2518, [2008] STC 1158. Concerned the correct calculation of benefit in a case of VAT fraud where no taxable trading activity took place.

Further notable cases

R v Suchedina, R v Hosier and Lehaney, R v Hadley [Andrew Bodnar] [2006] EWCA Crim 2543, [2007] 1 Cr. App. R. 23, [2007] Crim LR 301. Concerned the correct approach to allegations of money laundering conspiracies following the decision of the House of Lords in *R v Saik*.

McKinsley v Crown Prosecution Service [Tim Owen QC, Andrew Bodnar] [2006] EWCA Civ 1092, [2006] 1 WLR 3420, Times 22nd August 2006, Independent 12th October 2006. Concerned the question whether a defendant may seek a certificate of inadequacy on the basis of errors made at the original confiscation proceedings.

R v Carter and Others [Andrew Bodnar] [2006] EWCA Crim 288. Concerned the question of the appropriate measure of benefit in cases where a defendant committed an illegal act but their assets were derived from a legal activity facilitated by that illegal act.

Director of Assets Recovery Agency v Green and Others [Tim Owen QC, Andrew Bodnar] [2005] EWHC 3158 (Admin), Times 27th February 2006. Matters to be proved by a claimant for a civil recovery order under Part 5 POCA.

Singh v Director of Assets Recovery Agency [Tim Owen QC] [2005] EWCA Civ 580, [2005] 1 WLR 3747, [2005] Crim LR 665, Times 31st May 2005, Independent 27th May 2005. Concerned the question whether it is an abuse of process for a claimant to seek a civil recovery order where confiscation proceedings had failed, based entirely on allegations which were made in those confiscation proceedings.

Squirrell Ltd v Natwest and Revenue and Customs Prosecution Office [Sam Grodzinski] [2005] EWHC 664 (Ch), [2006] 1 WLR 637, [2005] 2 All ER 784, [2005] 2 Lloyd's Rep 374, Times 25th May 2005. Concerned the question whether a bank is entitled to freeze a bank account without warning and refuse to provide any information to its customer because of the provisions of the money laundering provisions of POCA.

R v Barnham [Tim Owen QC] [2005] EWCA Crim 1049, [2006] 1 Cr. App. R. (S.) 16, [2005] Crim LR 657. Concerned the correct approach to allegations of hidden assets in confiscation proceedings.

R v K [Andrew Bodnar] [2005] EWCA Crim 619, [2006] BCC 362, Times 15th March 2005. Concerned the considerations to be applied in determining whether a management receiver should be appointed under POCA, and the proper approach to an allegation that the corporate veil should be pierced.

Re Saggat [Tim Owen QC, Andrew Bodnar] [2005] EWCA Civ 174, [2005] 1 WLR 2964 Times 14th March 2005. Concerned the relevance of delay and compatibility with Article 6 ECHR in applications to increase confiscation orders.

R v May and Others [Tim Owen QC, Andrew Bodnar] [2005] EWCA Crim 97, [2005] 1 WLR 2902, [2005] 3 All ER 523, [2005] 2 Cr. App. R. (S.) 67, Times 15th February 2005. Concerned questions of legitimate expectation, apportionment of benefit and the relevance of a written basis of plea in confiscation proceedings.

Further notable cases

R v Metcalfe and Metcalfe [Tim Owen QC, Andrew Bodnar] [2004] EWCA Crim 3253, [2005] 2 Cr. App. R. (S.) 50, [2005] Crim LR 315, Times 12th January 2005. Concerned the question whether a confiscation order could be made under the DTA for a "drug trafficking offence" where the defendants did not in fact traffic controlled drugs.

R v Edwards [Andrew Bodnar] [2004] EWCA Crim 2923, [2005] 2 Cr. App. R. (S.) 29. Concerned the correct measure of benefit in cases of excise duty evasion.

Attorney-General's Reference (No. 4 of 2003) (Suchedina) [Tim Owen QC, Andrew Bodnar] [2004] EWCA Crim 1944, [2005] 1 WLR 1574, [2005] 1 Cr. App. R. 2, [2005] 1 Cr. App. R. (S.) 79, Times 9th September 2004. Concerned the question whether a Judge could refuse to make a confiscation order on the basis that it was not clear whether a defendant had committed a "drug trafficking" or another type of offence.

Barnette and Montgomery v Government of United States [Clare Montgomery QC] [2004] UKHL 37, [2004] 1 WLR 2241, [2004] All ER 289, [2004] HRLR 36, Times 29th July 2004, Independent 30th July 2004. Concerned the question whether the fugitive disentitlement doctrine applicable in the United States rendered the registration of a forfeiture order made in that jurisdiction as an external confiscation order amounted to a violation of Article 6 ECHR.

R v Rezvi [Tim Owen QC, Danny Friedman] (Part of *R v Rezvi*, *R v Benjafield*) [2002] UKHL 1, [2003] 1 AC 1099, [2002] 2 WLR 235, [2002] 1 All ER 801, [2002] 2 Cr. App. R. 2, [2002] 2 Cr. App. R. (S.) 70, [2002] HRLR 19, [2002] UKHRR 374, [2002] Crim LR 335, Times 28th January 2002. Concerned the compatibility of the statutory assumptions with the presumption of innocence and Article 6.2 ECHR.

R v Smith (David) [Ben Emmerson QC] [2001] UKHL 68, [2002] 1 WLR 54, [2002] 1 All ER 366, [2002] 1 Cr. App. R. 35, [2002] 2 Cr. App. R. (S.) 37, [2002] Crim LR 396, Times 17th December 2001, Independent 18th December 2001, Daily Telegraph 20th December 2001. Concerned the correct measure of benefit in cases where the defendant obtained a pecuniary advantage.

Government of United States v Montgomery & Another [Clare Montgomery QC] [2001] UKHL 3, [2001] 1 WLR 196, [2001] 1 All ER 815, Times 6th February 2001, Independent 12th March 2001. Concerned the propriety of enforcing a confiscation order made in the United States prior to such orders becoming enforceable in the UK, and whether interest was properly to be considered part of the confiscation order.

Recommendations

[Tim Owen QC](#) is recommended by Chambers and Partners 2010 and the Legal 500 2009 for his confiscation work.

[Andrew Bodnar](#) is recommended by both Chambers and Partners 2010 and the Legal 500 2009 for his confiscation work.

Publications

Smith, Owen and Bodnar on Asset Recovery, loose-leaf publication, published by OUP.

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