

Clients & Friends Memo

UK Crime Agency Secures Novel Court Ruling for Over £50 Million in Crime-Linked Funds

December 7, 2022

On 25 November, the High Court of England and Wales ruled in a significant decision that suspected proceeds of crime linked to unnamed individuals must be transferred to the National Crime Agency (NCA). The funds were held by 30,000 former Barclays account holders, totaling £53,901,346, and had been identified by Barclays since 2011 as potentially the proceeds of crime as the account holders (who were unconnected) were suspected of committing fraud. The funds had been placed by Barclays in ringfenced accounts to prevent the account holders from accessing the funds whilst they requested evidence to confirm the legitimacy of the funds. Barclays was listed as an interested party in the claim.

This decision, which was not a finding of fault against the bank, stemmed from Barclays initially bringing the funds to the attention of the NCA. This decision is the first time legal powers under the Proceeds of Crime Act 2002 (POCA) have been utilized to recover proceeds of crime without naming the account holders in the court action. The NCA's lawyers informed the court that the money was likely "the proceeds of unlawful conduct," which was a view shared by Barclays. The Judge, Robin Knowles, made the order for civil recovery "without hesitation."

Legal framework

[Part 5](#) of POCA introduced provisions for the recovery of criminal assets acquired through unlawful conduct through the civil courts. The purpose of forfeiture orders is to deprive criminals of the proceeds of their crimes. Under POCA, enforcement authorities, which include the NCA, can bring proceedings before the High Court (in England and Wales) or Court of Session (in Scotland).

According to the House of Lords,¹ the legitimate aims of confiscation are:

- to punish convicted offenders;
- to deter the commission of further offences; and

¹ See *R v Rezvi* [2002] UKHL 1 and *R v Benjafield and others* [2002] UKHL 2.

- to reduce the profits available to fund further enterprises.

Any kind of property owned by the defendant may be seized through a civil recovery order so long as its value is less than or equal to the amount the defendant is suspected to have received via unlawful activity. Current guidance states that, as a general rule, criminal prosecution should be considered before civil recovery. If criminal proceedings are found to not be in the public interest or if the proceedings fail, then civil recovery may be considered.

On 2 June 2021, the Crown Prosecution Service published revised [guidance](#) for prosecutors. The primary change to the guidance is related to s. [330](#) of POCA, which creates the offence of ‘failure to disclose’ when a person knows or suspects, or has reasonable grounds to know or suspect, that a person is engaged in money laundering. The guidance states that prosecutions brought under s. 330 may be brought even when it cannot be proven that the underlying money laundering was “planned or undertaken.” This change increased the likelihood that prosecutions would be brought against financial institutions for failure to report under s. 330 of POCA.

The order made in this case was issued under s. [266](#) of POCA.

Example of cooperation

This decision is a good example of how financial institutions should be proactive in working with regulators in order to identify and deal with the suspected proceeds of crime. The NCA commended Barclays for notifying the agency of the potential illegality of the money, with Adrian Searle, director of the National Economic Crime Centre (NECC) at the NCA, stating in a [press release](#) that the ruling is “a great example of how the public and private sector can work together to recover proceeds of crime. The proactive identification of these funds by Barclays was the reason we could take this action.” He also explained that the NECC “will continue to work with the financial and regulated sectors to identify and recover illicit finance, using all the tools at our disposal.”

A Barclays spokesperson said: “We are vigilant in rooting out and identifying any criminal activity. We welcome the High Court’s ruling, which enables the funds to be transferred to the NCA to support further their efforts in stopping scams and economic crime.”

Both Barclays and the NCA have been unable to identify the victims of the crime so they recommend that anyone with questions over missing funds should contact either their own bank or Action Fraud, the UK reporting center for fraud and cybercrime.

As explained in a [press release](#) by Barclays’ counsel, “the effect of the recovery order was to vest the debts held by the account holders against the Bank (that is the credit balances held to their accounts) in the NCA. In this way, the obligations in debt by the Bank to the account holders were cancelled and the equivalent sum paid to the NCA.”

Analysis

Financial institutions have the often unenviable and difficult tasks of reporting suspected criminal proceeds and not tipping off clients whilst also having to determine whether to cease business relationships with these customers before any criminal investigations are complete. This ruling may simplify the tasks for both the NCA and the involved financial institution.

With the changes to the guidance for prosecutors introduced last year and clearer messaging from regulators on the importance of openness and transparency, firms falling within the regulated sector (as defined in [Schedule 9](#) of POCA) are being more proactive in making reports to relevant authorities. This change reflects the general expectation on firms outlined in Principle 11 of the Financial Conduct Authority, which requires that firms must deal with regulators in an “open and cooperative way” and that they must disclose “anything relating to the firm which that regulator would reasonably expect notice.”

Following this decision, it would be advisable for other financial institutions to follow this approach in identifying accounts and bringing them to the attention of the NCA.

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