



Fraud Newsletter No. 36

October 2019

Cases

■ **Legal advice privilege subsists even if no-one (e.g. dissolved company) exists to assert it:** *Addelee v Dentons Europe LLP* [2019] EWCA Civ. 1600.

■ **Local authority trading standards entitled to seek s345 POCA production orders** when investigating energy brokers suspected of, but not charged with mis-selling: *Qualter and Ors v Preston Cr Ct* [2019] EWHC 2563.

Sentencing & Confiscation

■ **Discharge of Restraint Order** under s42(7) POCA (proceedings not started within reasonable time) depends on all circumstances, including need for preparation of disclosure schedules: *S* [2019] EWCA Crim 1728. Obiter: progress reports should be specific as to current state of play and not contain vague and bland generalisations: §80

■ **Parent's turnover should not generally be used to increase a subsidiary's turnover** for sentencing purposes absent special (undefined) factors: *Bupa Care Homes (BNH) Ltd* [2019] EWCA 1691 citing *Tata Steel UK Ltd* [2017] EWCA Crim 704, [2017] 2 Cr App R (S) 29 and *NPS London Ltd* [2019] EWCA Crim 228 (unreported).

BILLS, STATUTES & STATUTORY INSTRUMENTS

■ **Crime (Overseas Production Orders) Act 2019 (Commencement No.1) Regulations 2019**, SI 2019 No. 1318 and **Explanatory Note** brings into force ss1(5) and 1(6) **Crime (Overseas Production Orders) Act 2019** on 9 Oct 19.

■ **Criminal Practice Directions 2015 Amendment No. 9** issued 10 Oct 19, effective from 14 Oct 19 dealing with Ds' right to give evidence warning; variation of sentence; skeleton arguments; CA bundles etc. **Summary of Amendment No 9** and **Consolidated CPD 2015**.

■ **Magistrates' Courts (POCA (External Requests and Orders) Order 2005, Part 5B) Rules 2019**, SI 2019 No. 1369 laid 23 Oct 19; come into force 12 Nov 19 re forfeiture of bank and building society account monies: see **SI Explanatory Note**.

■ **Magistrates' Courts (POCA (External Requests and Orders) Order 2005, Part 5A, and Miscellaneous Amendments) Rules 2019**, SI 2019 No 1368 laid on 22 Oct 19, in force 12 Nov 19: setting out rules re forfeiture of bank and building society account monies; see **SI Explanatory Note** for further details

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Consultations, Guidance, circulars & Reports

- **Anti-Money Laundering: Report 2018:** MOEYVAL (Council of Europe) Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism: published 25 Sep 19.
- **Application of SAR and STOR regimes to firms:** Letter from Julia Hogget, FAC Marketing Oversight to UK Finance, 6 Sep 19.
- **Best Practices on Beneficial Ownership for Legal Persons:** FATF Report: 24 Oct 19.
- **CPS Guidance for Experts on Disclosure, Unused Material and Case Management:** updated 30 Sep 19.
- **Case progression in the SFO: Review of case progression systems and processes between case acceptance and charge:** HMCPSI 8 Oct 19: generally positive report: [Summary](#).
- **Cyber: Keep the light on - An inspection of the police response to cyber-dependent crime:** HMICFRS report 24 Oct 19: [Press Report Summary](#) 24 Oct 19: recommends establishing a national police response, not the current 43 force model.
- **Consultation Paper: MAR review report:** ESMA (European Securities & Markets Authority) 3 Oct 19 on the provisions of MAR (the Market Abuse Regulations): [ESMA Press Release summary](#): 3 Oct 19.
- **The Global Framework for Fighting Financial Crime:** IFF & Deloitte 16 Oct 2019. [Press Release Summary](#).
- **Advisory Notice: Money Laundering and Terrorist Financing controls in higher risk jurisdictions:** HM Treasury update 21 Oct 19: now includes North Korea.
- **Joint Opinion of the European Supervisory Authorities on the risks of money laundering and terrorist financing affecting the EU's financial sector:** EBA (European Banking Authority) 4 Oct 19.
- **Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings:** FRA (European Agency for Fundamental Rights): Sep 19.
- **Serious and Organised Crime Policy Framework:** MoJ / HMPPS 3 Oct 19. [Summary](#).
- **UK-US Agreement on Access to Electronic Data for the purpose of countering Serious Crime:** USA No. 6 (2019) CP 178 signed 3 Oct 19; [Explanatory Memorandum](#): 7 Oct 19 [Home Office Press Release and Summary](#): 4 Oct 19.
- **Who's behind the wheel? Fixing the Standards on Company Ownership:** Transparency International: 17 Oct 19

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News

- **City of London Police (COLP) to be National Lead Force (NLF) for Fraud:** Home Office, 26 Sep 19.
- **FCA: Turning technology against financial crime:** speech by Megan Butler, Executive Director of Supervision - Investments, Wholesale & Specialists: Royal United Services Institute: 23 Oct 19.
- **US recover \$700m in corruption investigation re Malaysia Development Board,** part of \$4.5B allegedly embezzled: Transparency International: 1 Nov 29
- **SFO: Investigation into LIBOR closed:** 18 Oct 19; **Nicholas Levene (City trader convicted in 2012) £118k assets confiscated** (original 2013 confiscation order for £1 because of bankruptcy proceedings).

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