



The Bar Council

25 February 2025

Updated Practice note on *Rex (on the application of World Uyghur Congress) v the National Crime Agency* [2024] EWCA Civ 715

Practitioners should note that in *Rex (on the application of World Uyghur Congress) v the National Crime Agency* [2024] EWCA Civ 715, 26 June 2024, the Court of Appeal (Civil Division) held that the ‘adequate consideration’ exemption in s.329(2)(c) has no application to the offences in s.327 or s.328 of the Proceeds of Crime Act (‘POCA/the Act’).

The Court also held that where a person acquires property that represents someone’s benefit from criminal conduct and they know or suspect that it constitutes or represents such a benefit, that property remains criminal property even if the recipient is able to avail themselves of the s.329(2)(c) ‘adequate consideration’ exemption.

The Bar specific Part 2a LSAG Guidance, and in particular the FAQs and Typologies (for example in FAQ 6 & 7 and Typology 1, 9 & 12) where they refer to the ‘adequate consideration’ exemption must be read with the above qualification in mind. It is not correct to say, as the FAQs currently do, that: “In cases where adequate consideration has been provided the funds in possession of the recipient are no longer the proceeds of crime – regardless of whether you know or suspect that they are the proceeds of crime or not: *R. v. Afolabi* [2009] EWCA Crim 2879 (35).”

Even in cases where adequate consideration has been provided, where the funds in possession of the recipient are criminal property, they will remain criminal property where the recipient either knows or suspects that they are the proceeds of crime. Only persons who receive such funds without notice of their criminal nature receive them as clean funds.

The decision in *World Uyghur Congress* does not impact upon the decision in *Bowman v Fels* [2005] 1 W.L.R. 3083, in which the Court of Appeal held that s.328 of POCA was not intended to cover or affect the “ordinary conduct of litigation [or its consensual resolution] or the ordinary giving of legal advice”. The Court in *Bowman v Fels* was considering a lawyer’s obligations under POCA in relation to a lay client’s source of funds as relevant to the litigation. The Court was not required to consider a lawyer’s obligations under the Act in relation to the payment of their fees but did make these general statements:

“[53].If the ...UK legislator did not intend sections 327-329, to cover the ordinary conduct of legal proceedings or the ordinary giving of legal advice in circumstances not making the legal adviser a co-conspirator or accessory to any other offence, it was unnecessary- and would indeed have been inappropriate- to have introduced ... into sections 327-329 any equivalent exceptions to those provided...by section

330(6)(b)(10)(11)¹.

...

[84] Parliament cannot have intended that proceedings or steps taken by lawyers in order to determine or secure legal rights or remedies for the clients should involve them in [a section 328 offence] even if they suspected the outcome of the proceedings might have such an effect.”

A barrister who receives payment for fees knowing or suspecting that the funds received are criminal property may be in possession of criminal property even if they give adequate consideration for those monies. Although an adequate consideration exemption in respect of a section 329 offence may be available, a subsequent conversion or transfer of those monies could potentially expose the barrister to criminal liability under s.327 of the Act. As such you should consider whether any such conversion or transfer falls within the general statements from *Bowman v Fels* in respect of s.327 or s.328 of the Act.

A barrister who finds themselves in such a position should give careful consideration as to whether they should make a Suspicious Activity Report (“SAR”) to the National Crime Agency to request a Defence Against Money Laundering. However, the making of such an SAR is not a step to be taken lightly, given client confidentiality. As the unwarranted disclosure of client confidential material to a third-party is likely to be considered serious misconduct, if you are, or suspect that you are, in receipt of criminal property and are not sure what to do, you should take independent legal advice as to what steps to take.

The Guidance will be updated as soon as possible.

¹ These sections provide that an offence is not committed where the person is a professional legal adviser and the information or other matter came to them in privileged circumstances.